

WSR 22-18-010

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 25, 2022, 2:28 p.m.]

Supplemental Notice to WSR 22-05-014 and 22-07-077.

Preproposal statement of inquiry was filed as WSR 21-24-062 and 22-01-024.

Title of Rule and Other Identifying Information: WAC 388-101D-0030 Staffing requirements, 388-101D-0070 Background checks—National fingerprint background checks, 388-101D-0075 Background checks—Requirements for service providers, and 388-101D-0080 Background checks—Provisional hire—Pending results.

Hearing Location(s): On October 11, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than October 12, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHRSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on October 11, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on September 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending WAC 388-101D-0030 to allow providers to hire an employee without a high school diploma or GED. DDA is amending WAC 388-101D-0070 to remove subsection (3). DDA is amending WAC 388-101D-0075 and 388-101D-0080 to correct broken cross references.

Reasons Supporting Proposal: Amendments to WAC 388-101D-0030 align with the education qualifications for direct support professionals in chapter 388-112A WAC and chapter 74.39A RCW, which do not require a GED or high school diploma.

Amendments to WAC 388-101D-0070 align it with WAC 388-101D-0075 and 28 C.F.R. Section 20.33(d). WAC 388-101D-0070(3) was too broad in how long it allowed a fingerprint result to remain valid. Removing subsection (3) aligns this rule with federal regulations. Additionally, the FBI audit guide for noncriminal justice access to criminal history record information (CHRI) has determined that reuse of CHRI is permitted for the "same purpose" but only "within a relatively short period of time." Amendment to WAC 388-101D-0080 is to correct broken cross references.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040, 71A.12.110, and 74.39A.056.

Rule is necessary because of state court decision, 28 C.F.R. Section 20.33(d).

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Megan Kwak, P.O. Box 45310, Olympia, WA 98504-5310, 360-764-9909.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(5).

Explanation of exemptions: The proposed amendments impose no costs on small businesses.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated.

Small Business Economic Impact Statement (SBEIS)

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in an SBEIS. Preparation of an SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has 50 or fewer employees."

DDA analyzed these proposed rules and concludes that the proposed changes may impact providers who are small businesses, but do not impose costs to any providers.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), DDA has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), DDA has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

DDA has analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses because the department pays for the fingerprinting required by the subsection proposed for removal (WAC 388-101D-0070(3)). The preparation of a comprehensive SBEIS is not required.

Costs: As described below, DDA's analysis revealed that there are no new costs imposed:

- It is optional for a provider to hire a person using the education exemption in WAC 388-101D-0030.
- DDA pays for the fingerprinting required by amendments to the background check sections.

Benefits: Many benefits will result from the adoption of the proposed amendments. These benefits include:

- Helping providers to address staffing difficulties.

- Enabling providers to meet client health and safety needs with increased staffing.
- Alignment with federal regulations and guidance from the FBI.
- Simplified language for easier compliance.

CONCLUSION: DDA concludes that the benefits of these regulations exceed any possible cost. DDA has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

A copy of the detailed cost calculations may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

August 24, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4931.1

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((servicee)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

((1) Have)) (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991 or is exempt under subsection (2) of this section;

((2) Be at least eighteen years of)) (b) Is age 18 or older when employed as a direct ((care staff, or at least twenty-one years of age or older when employed as an administrator)) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

((3) Have)) (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

((4) Passed the department background check as required by WAC 388-101-3250)) (e) Satisfies department background check requirements under chapter 388-825-WAC.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0070 Background checks—National fingerprint background checks. (1) ((Administrators and all caregivers who are)) An applicant as defined in WAC 388-113-0010 hired on or after January 1, 2016, ((and are)) who is not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the ((service)) provider must ((not employ, directly or by contract,)) prevent an administrator, employee, volunteer, student, or subcontractor ((who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113, or that is a disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.)) from having unsupervised access to a client if the person has a:

- (a) Disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC; or
- (b) Disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.

((3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.))

[WSR 17-03-062, recodified as § 388-101D-0070, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapters 71A.12, 74.34, and 74.39A RCW. WSR 16-18-040, § 388-101-3202, filed 8/30/16, effective 9/30/16.]

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0075 Background checks—Requirements for service providers. (1) Service providers must follow the background check requirements described in chapter 388-113 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the department's background check results show that an administrator, employee, volunteer, student, or subcontractor has any of the following, then the service provider must prevent that person from having unsupervised access to clients:

(a) A disqualifying conviction or pending criminal charge under chapter 388-113 WAC; or

(b) A disqualifying negative action under chapter 388-113 WAC ((388-101-3090)).

(5) If the background check results show any of the following, then the service provider must conduct a character, suitability, and competence review before allowing the person unsupervised access to clients:

(a) The person has a conviction or pending criminal charge, but the conviction or criminal charge is not disqualifying under chapter 388-113 WAC ((388-113-0020));

(b) The person has a conviction or pending criminal charge that meets one of the exceptions listed in WAC ((388-113-0040)) 388-113-0025; or

(c) Any of the circumstances described in WAC 388-101-3080 apply to the individual.

(6) When a service provider receives the results of a person's background check, the service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ((ten)) 10 working days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(7) The service provider must renew the Washington state background check for each administrator, employee, volunteer, student, or subcontractor of a service provider. The service provider must at least every ((thirty-six)) 36 months keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(8) Licensed assisted living facilities or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(9) All applicants for certification must have a background check.

[WSR 17-03-062, recodified as § 388-101D-0075, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3250, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3250, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3250, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 71A.12.080. WSR 10-03-065, § 388-101-3250, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3250, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0080 Background checks—Provisional hire—Pending results. ((Persons identified in WAC 388-101-3250 and who have)) Each

provider applicant or employee who has lived in Washington state less than three years, or who ((are)) is otherwise required to complete a national fingerprint-based background check, may be hired for a ((one hundred twenty)) 120-day provisional period when:

- (1) The person is not disqualified based on the initial results of the background check from the department; and
- (2) A national fingerprint-based background check is pending.

[WSR 17-03-062, recodified as § 388-101D-0080, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3255, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3255, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3255, filed 7/30/10, effective 1/1/11.]

WSR 22-18-011

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 25, 2022, 2:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-035.

Title of Rule and Other Identifying Information: WAC 388-828-9235

How does DDA determine your environmental support score?, 388-828-9340

How does your employment service type affect how your employment service hours are used?, 388-828-9360 What is short-term employment support?, 388-845-1035 Who are qualified providers of individualized technical assistance services?, and 388-845-2105 Who are qualified providers of supported employment services?

Hearing Location(s): On October 11, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see DSHS website for the most current information.

Date of Intended Adoption: Not earlier than October 12, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DShSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6085, by 5:00 p.m. on October 11, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on September 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules to align with changes to CARE, remove content about prevocational services, correct inaccurate cross references, and reformat sections about qualified providers.

Reasons Supporting Proposal: These amendments are intended to create consistency between DDA's rules and CARE website, reduce confusion by correcting inaccurate cross references, and clarify qualified provider requirements.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Megan Burr, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1523.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: DDA's analysis revealed that there are no new costs imposed because amendments to:

- WAC 388-828-9235 updates are general housekeeping to align with the support score calculation in CARE and do not impact eligibility for services. Because the amendments do not impact eligibility for services, clients and providers should incur no costs as a result of the proposed changes.
- WAC 388-828-9340 impose no costs because prevocational services have not been open to referrals since 2014 and the service ended in 2019.
- WAC 388-828-9360 impose no costs because the amendments are corrections to cross references to other rules.
- WAC 388-845-1035 and 388-845-2105 impose no costs because the rules are not substantively different. These rules were rewritten for easier reading and to match the format of other rules about qualified providers in chapter 388-845 WAC.

Scope of exemption for rule proposal:

Is fully exempt.

August 25, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4940.2

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-9235 How does DDA determine your environmental support score? DDA determines your environmental support score by adding the sum of your assessment responses to employment support limitations in the following table:

Response	Employment Support/ Limitations	Score
1	Behavior((s impact workplace)) support	1
2	((Employment goals too specific)) Adaptive equipment	1
3	Fearful((/)) or scared of new situations	0
4	((Frequent job changes)) Communication tools	1
5	((High turnover of natural supports)) Coordination with residential provider	1

Response	Employment Support/ Limitations	Score
6	((Hygiene issues unresolved)) <u>Technical assistance</u>	1
7	((Lacks social skills)) <u>Unable</u> <u>to read</u>	1
8	((Little work history)) <u>Personal</u> <u>care needs</u>	1
((9	Narrow scope of job requirements	+)
10	Needs support arranging childcare	+
11	Others not supportive of employment goals	+
12	Others unable to support employment goals	+))
((13)) 9	Transportation	1
((14	Unable to regularly get to work on time	+))
((15)) 10	Uncertain about work	0
((16)) 11	Uncooperative((/)) or lacks motivation	0
12	<u>None of these</u>	<u>0</u>
Maximum employment support limitation score is:		((13)) <u>8</u>

Example: If you have selected responses 1, 3, 8, ((13,)) and ((15)) 9, the sum of your scores for employment support limitations would be 3, resulting in an environmental support score of 3 for WAC 388-828-9230.

[Statutory Authority: RCW 71A.12.030 and 71A.16.050. WSR 21-19-093, § 388-828-9235, filed 9/17/21, effective 10/18/21. Statutory Authority: RCW 71A.12.030, 71A.12.020(3), 71A.12.040(4), and 2009 c 564 §§ 103(7) and 205(c). WSR 11-13-039, § 388-828-9235, filed 6/8/11, effective 7/9/11.]

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9340 How does your employment service type affect how your employment service hours are used? Your employment service type determines where and how your service hours are provided.

(1) Individual supported employment:

(a) Your employment services are provided in typical community-based settings;

(b) The focus of employment services is on obtaining ((and/)) or maintaining integrated employment at or above the state's minimum wage in the general workforce; and

(c) Your employment services are not shared with others.

(2) Group supported employment:

(a) Your employment services are provided in typical community-based settings;

(b) The focus of employment services is on providing ongoing supervised employment that will lead to greater opportunities for competitive and integrated employment and career advancement at or above minimum wage; and

(c) Your employment service provider works with you and others in a group setting.

((3) Prevocational services:

(a) Your employment services are:

(i) Provided in specialized or segregated settings for individuals with developmental disabilities; and

((ii) Include monthly employment related activities in the community.

((b) Service and supports are designed to further habilitation goals that will lead to greater opportunities for competitive and integrated employment and career advancement at or above the state's minimum wage; and

((c) Your employment service provider works with you and others in a group setting.))

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-01-076, § 388-828-9340, filed 12/18/12, effective 1/18/13.]

AMENDATORY SECTION (Amending WSR 19-15-008, filed 7/8/19, effective 8/8/19)

WAC 388-828-9360 What is short-term employment support? (1)

Short-term employment support is a service that allows DDA to approve service hours in addition to the amount of your employment service base hours under WAC 388-828-9335 and add-on hours under WAC ((388-828-9345)) 388-828-9350 and 388-828-9355 when:

(a) You are beginning a new job;

(b) There is a planned or unexpected change in your job or job duties;

(c) Your current employment is at risk and short-term supports are needed to assist you in maintaining your current job; or

(d) You are stuck on your pathway to employment and need individualized technical assistance.

(2) Short-term employment support may be authorized for a maximum of six months at a time and may be reauthorized when:

(a) The circumstances identified in subsection (1) of this section continue as evidenced by receipt of a current employment work plan or review describing the need; and

(b) Both your employment provider and county recommend continuing the use of short-term employment support.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 19-15-008, § 388-828-9360, filed 7/8/19, effective 8/8/19. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-01-076, § 388-828-9360, filed 12/18/12, effective 1/18/13.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1035 Who are qualified providers of individualized technical assistance services? ((Providers of individualized technical assistance service must be a county or an individual or agency contracted with a county or DDA.)) To be a qualified provider of individualized technical assistance services, an entity must be:

- (1) A county contracted with DDA to provide individualized technical assistance services; or
- (2) An individual or agency contracted with a county that is contracted with DDA to provide individualized technical assistance services.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1035, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-1035, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2105 Who are qualified providers of supported employment services? ((Providers of supported employment services must be a county, or agency or an individual contracted with a county or DDA.)) To be a qualified provider of supported employment services, an entity must be:

- (1) A county contracted with DDA to provide supported employment services; or
- (2) An individual or agency contracted with a county that is contracted with DDA to provide supported employment services.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2105, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2105, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2105, filed 12/13/05, effective 1/13/06.]

WSR 22-18-013

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 26, 2022, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-100.

Title of Rule and Other Identifying Information: WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs and 182-507-0130 Refugee medical assistance.

Hearing Location(s): On October 11, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_1XqE8IwbRdW1KM7ehMa5ug. If the link opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than October 12, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 11, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by September 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-504-0015 and 182-507-0130 to expand the eligibility period for refugee medical assistance from eight months to 12 months for persons whose date of eligibility is on or after October 1, 2021. The agency has determined that this rule amendment is necessary to align with the eligibility period set by the director of the federal Office of Refugee Resettlement

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Dody McAlpine, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-9964.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules pertain to client program eligibility and do not impose costs on businesses.

August 26, 2022
Wendy Barcus
Rules Coordinator

OTS-3932.1

AMENDATORY SECTION (Amending WSR 22-12-033, filed 5/24/22, effective 6/24/22)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) For a newborn eligible for apple health, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are eligible for apple health based on pregnancy, the certification period continues through the last day of the month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

- (a) Begins the first day of the month you are eligible; and
- (b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the ((eighth)) 12th month following your date of entry to the United States.

(6) For all other CN coverage, the certification period is 12 months.

(7) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

- (a) Turn age 19;
- (b) Move out-of-state; or
- (c) Die.

(8) When you turn 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the 12-month period is not over, unless:

- (a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;
- (b) The inpatient stay continues into the following month or months; and
- (c) You remain eligible except for turning age 19.

(9) A retroactive certification period is described in WAC 182-504-0005.

(10) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-12-033, § 182-504-0015, filed 5/24/22, effective 6/24/22; WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority:

RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

OTS-3927.3

AMENDATORY SECTION (Amending WSR 20-21-008, filed 10/8/20, effective 11/8/20)

WAC 182-507-0130 Refugee medical assistance (RMA). (1) You are eligible for refugee medical assistance (RMA) if all the following conditions are met. You:

- (a) Meet immigration status requirements of WAC 182-507-0135;
- (b) Have countable resources below ((~~one thousand dollars~~) \$1,000) on the date of application;
- (c) Have countable income equal to or below ((~~two hundred~~) 200) percent of the federal poverty level (FPL) on the date of application. The following income is not considered when determining eligibility for RMA:
 - (i) Resettlement cash payments made by the voluntary agency (VOLAG);
 - (ii) Income of a sponsor is not counted unless the sponsor is also part of your assistance unit; and
 - (iii) Income received after the date of application.
- (d) Provide the name of the VOLAG which helped bring you to the United States so that the department of social and health services (DSHS) can promptly notify the VOLAG (or sponsor) about the medical application.
- (2) If you receive refugee cash assistance (RCA) you are eligible for RMA as long as you are not otherwise eligible for medicaid or a

children's health care program as described in WAC 182-505-0210. You do not have to apply for or receive RCA in order to qualify for RMA.

(3) You are not eligible to receive RMA if you are:

(a) Already eligible for medicaid or a children's health care program as described in WAC 182-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a DSHS-approved individual responsibility plan (IRP); or

(c) A nonrefugee spouse of a refugee.

(4) If approved for RMA, the agency or its designee issues an approval letter in both English and your primary language. The agency or its designee also sends a notice every time there are any changes or actions taken which affect your eligibility for RMA.

(5) You may be eligible for RMA coverage of medical expenses incurred during the three months prior to the first day of the month of the application. Eligibility determination will be made according to medicaid rules.

(6) If you are a victim of human trafficking you must provide the following documentation and meet the eligibility requirements in subsections (1) and (2) of this section to be eligible for RMA:

(a) Adults, ((eighteen)) 18 years of age or older, must provide the original certification letter from the United States Department of Health and Human Services (DHHS). No other documentation is needed. The ((eight-month)) eligibility period will be determined based on the entry date on your certification letter;

(b) A child victim under the age of ((eighteen)) 18 does not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements;

(c) A family member of a certified victim of human trafficking must have a T-2, T-3, T-4, or T-5 visa (derivative T-Visas), and the family member must meet eligibility requirements in subsections (1) and (2) of this section.

(7) The entry date for an asylee is the date that asylum status is granted. For example, you entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and were granted asylum on September 1, 2000. The date of entry is September 1, 2000, and that is the date used to establish eligibility for RMA.

(8) (a) RMA ends on either:

(i) The last day of the eighth month from the month ((you)) the person entered the United States if they entered the United States on or before September 30, 2021. For example, if ((you)) they entered the United States on ((May 28, 2011)) September 30, 2021, ((you)) they are eligible through ((the end of December 2011.)) April 30, 2022; or

(ii) The last day of the 12th month from the month the person entered the United States if they entered the United States on or after October 1, 2021. For example, if they entered the United States on October 25, 2021, they are eligible through September 30, 2022.

(b) You may receive RMA benefits for more months if you are in a category of persons for whom the federal Office of Refugee Resettlement has extended the eligibility period.

(9) If you are approved for RMA you are continuously eligible through the end of the ((eighth month after your entry to the United States)) initial RMA certification period, regardless of an increase in income.

(10) The agency, or its designee, determines eligibility for medicaid and other medical programs for your spouse when the spouse ar-

rives in the United States. If the spouse is not eligible for medicaid due to your countable income, the spouse is still eligible for RMA ((for eight months following the spouse's entry into the United States)) under subsection (8) of this section.

(11) If you disagree with a decision or action taken on the case by the agency, or its designee, you have the right to request a review of the case action(s) or request an administrative hearing (see chapter 182-526 WAC). The request must be received by the agency, or its designee, within ((ninety)) 90 days of the date of the decision or action.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-21-008, § 182-507-0130, filed 10/8/20, effective 11/8/20. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0130, filed 9/5/12, effective 10/6/12. WSR 12-02-034, recodified as § 182-507-0130, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-466-0130, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0130, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-466-0130, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.08.090, 74.08A.320. WSR 00-21-065, § 388-466-0130, filed 10/16/00, effective 11/1/00.]

WSR 22-18-021

PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed August 29, 2022, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-038.

Title of Rule and Other Identifying Information: WAC 516-38-115 Career planning and placement center, 516-38-116 Career planning and placement center—Placement credentials—Fees, 516-38-117 Recruitment activities, 516-38-118 Job notification, and 516-38-119 Reciprocal service.

Hearing Location(s): On October 11, 2022, at 11:00 a.m. Virtual public hearings necessitated by the COVID-19 pandemic have proven effective in allowing greater public access, eliminating the burden of physical travel, and maintaining public safety. Accordingly, a virtual meeting will be held with an optional in-person component. To attend the virtual public hearing, you must register in advance at <https://wwu-edu.zoom.us/meeting/register/tJEodOyrrT4tHdeQ-YzhHAa6wKITMS1EMqSA>. You may also register at the university rules website at <https://president.wwu.edu/chapter-516-38-wac>. After registering, you will receive a confirmation email containing information about joining the public hearing. To attend in person, email the university rules coordinator for meeting location. The hearing will start at 11:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: December 9, 2022.

Submit Written Comments to: Jennifer Sloan, Rules Coordinator, 516 High Street, Mailstop 9044, email sloanj2@wwu.edu, by October 10, 2022.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, rules coordinator, phone 360-650-3117, TTY 711, email sloanj2@wwu.edu, by October 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal WAC 516-38-115, 516-38-116, 516-38-118, and 516-38-119, placement services or reciprocal services are no longer provided. Amend WAC 516-38-117 for minor updates to better reflect current processes, define discrimination, and direct readers to career services center website.

Reasons Supporting Proposal: Update WAC to reflect current practice and define discrimination.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Mindy Pelton, Interim Director, Career Services, 516 High Street, Mailstop 9002, Bellingham, WA 98225, 360-650-7610.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct ty-

pographical errors, make address or name changes, or clarify language of a rule without changing its effect.
Is exempt under RCW 19.85.025(4).
Scope of exemption for rule proposal:
Is fully exempt.

August 29, 2022
Jennifer L. Sloan
Rules Coordinator

OTS-3919.1

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-38-117 Recruitment activities. (1) Employers((r)) or organizations (hereafter called employers) interested in hiring ((graduating)) students or alumni, and recruiting personnel from college or university graduate schools may conduct recruitment activity on campus ((and)). These activities shall be coordinated by the ((placement center)) career services center subject to the following conditions:

- (a) Employers shall not ((be eligible to recruit on campus unless they comply with all federal and state laws against discrimination.))
 - (b) All interviewing arranged by the placement center shall be conducted in offices or space provided by the placement center.
 - (c) Recruiters for school districts, business and industrial firms and government agencies may be assigned individual rooms and eligible persons required to adhere to prearranged interview schedules.
 - (d) Recruiters for the military, Peace Corps and Vista may be assigned individual rooms and students may be interviewed on a "drop-in" basis.
 - (e) All company literature and brochures shall be displayed either within the interviewing room or on placement center literature tables.
 - (f) Poster boards and signs related to campus interviews may be posted on bulletin boards or other designated areas upon the approval of the placement center, in compliance with university policy.)
- ((3) To be eligible to sign up for recruitment interviews, candidates must meet the qualifications stipulated by the prospective employer. First priority on sign-up schedules shall be given students

(b) Employers must comply with all university recruitment policies as listed on the career services center website.

(2) All prospective employers shall be free to present their points of view, and all students shall be free to determine whether they desire to listen to their presentations.

((3) To be eligible to sign up for recruitment interviews, candidates must meet the qualifications stipulated by the prospective employer. First priority on sign-up schedules shall be given students

~~currently enrolled and eligible for placement services (provided they have established complete placement credentials with the placement center) and second priority shall be given alumni eligible for placement services (provided they have established complete placement credentials with the placement center).)~~

[Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 – 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-38-117, filed 4/27/90, effective 5/1/90; Order 72-10, § 516-38-117, filed 11/17/72.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 516-38-115	Career planning and placement center.
WAC 516-38-116	Career planning and placement center—Placement credentials—Fees.
WAC 516-38-118	Job notification.
WAC 516-38-119	Reciprocal services.

**WSR 22-18-040
WITHDRAWAL OF PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE**
(By the Code Reviser's Office)
[Filed August 30, 2022, 8:51 a.m.]

WAC 132Q-10-210, 132Q-10-221, 132Q-10-600, and 132Q-10-608, proposed by the Community Colleges of Spokane in WSR 22-03-093, appearing in issue 22-03 of the Washington State Register, which was distributed on February 2, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-18-041
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF CORRECTIONS
(By the Code Reviser's Office)
[Filed August 30, 2022, 8:51 a.m.]

WAC 137-25-010 and 137-25-030, proposed by the department of corrections in WSR 22-03-068, appearing in issue 22-03 of the Washington State Register, which was distributed on February 2, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-18-042
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF CORRECTIONS
(By the Code Reviser's Office)
[Filed August 30, 2022, 8:52 a.m.]

WAC 137-56-005, 137-56-010, 137-56-015, 137-56-020, 137-56-030, 137-56-040, 137-56-050, 137-56-070, 137-56-080, 137-56-090, 137-56-095, 137-56-101, 137-56-105, 137-56-107, 137-56-110, 137-56-120, 137-56-140, 137-56-150, 137-56-160, 137-56-170, 137-56-175, 137-56-180, 137-56-200, 137-56-210, 137-56-220, 137-56-230, 137-56-240, 137-56-250, and 137-56-280, proposed by the department of corrections in WSR 22-03-067, appearing in issue 22-03 of the Washington State Register, which was distributed on February 2, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-18-043
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
(By the Code Reviser's Office)
[Filed August 30, 2022, 8:52 a.m.]

WAC 246-840-365 and 246-840-367, proposed by the department of health in WSR 22-04-081, appearing in issue 22-04 of the Washington State Register, which was distributed on February 16, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

**WSR 22-18-044
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
(By the Code Reviser's Office)
[Filed August 30, 2022, 8:52 a.m.]**

WAC 246-933-501, 246-933-510, 246-933-515, 246-933-520, 246-933-530, and 246-933-550, proposed by the department of health in WSR 22-04-087, appearing in issue 22-04 of the Washington State Register, which was distributed on February 16, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

**WSR 22-18-045
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**
(By the Code Reviser's Office)
[Filed August 30, 2022, 8:53 a.m.]

WAC 220-414-100, proposed by the department of fish and wildlife in WSR 22-04-105, appearing in issue 22-04 of the Washington State Register, which was distributed on February 16, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 22-18-071

PROPOSED RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed September 2, 2022, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-031.

Title of Rule and Other Identifying Information: Chapter 495B-121 WAC; amending WAC 495B-121-235, 495B-121-245, and 495B-121-265; and new WAC 495B-121-286.

Hearing Location(s): On October 18, 2022, at 12:15 p.m., at Bellingham Technical College, College Services, Room 215, 3028 Lindbergh Avenue, Bellingham, WA 98225.

Date of Intended Adoption: October 20, 2022.

Submit Written Comments to: Ronda Laughlin, 3028 Lindbergh Avenue, Bellingham, WA 98225, email rlaughlin@btc.edu, fax 360-752-7134, by October 3, 2022.

Assistance for Persons with Disabilities: Contact Mary Gerard, phone 360-752-8576, fax 360-752-7376, email ar@btc.edu, by October 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 1751 updates the definition of hazing and requires institutions of higher education to prohibit in its code of conduct hazing off campus as well as on campus as modified in chapter 28B.10 RCW.

Reasons Supporting Proposal: The new language ensures that Bellingham Technical College is in compliance with recent legislation.

Statutory Authority for Adoption: Chapters 28B.10, 34.05 RCW; RCW 28B.50.140(13); 20 U.S.C. § 1092(f).

Statute Being Implemented: Chapter 28B.10 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Bellingham Technical College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michele Waltz, CS 201, 360-752-8440.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 1, 2022
Ronda Laughlin
Executive Assistant to the President

OTS-4049.2

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-235 Statement of jurisdiction. (1) The student conduct code shall apply to ((student)) conduct by students and student groups that occurs:

- (a) On Bellingham Technical College premises and facilities;
- (b) At or in connection with college-sponsored activities; or
- (c) To off-campus((, and which,)) conduct that in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of admission at the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, amended and recodified as § 495B-121-235, filed 3/18/21, effective 4/18/21. Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-060, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-245 Definitions. The following definitions shall apply for the purpose of this student conduct code.

- (1) "Board" means the board of trustees of Bellingham Technical College.
- (2) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College employee designated by the president to be responsible for implementing and enforcing the student conduct code. The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Student group" for purposes of this code is a student organization or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, and student performance groups.

(5) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

((+5))) (6) "The president" is the president of Bellingham Technical College. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

((+6))) (7) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

((+7))) (8) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

((+8))) (9) "Respondent" is the student against whom disciplinary action is initiated.

((+9))) (10) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail, or first-class mail, to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

((+10))) (11) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first-class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

((+11))) (12) "College premises" includes all campuses of Bellingham Technical College, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

((12)) (13) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, and persons who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

((13)) (14) "Day" means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.

((14)) (15) A "complainant" is an alleged victim of sexual misconduct.

((15)) (16) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-265(13).

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, amended and recodified as § 495B-121-245, filed 3/18/21, effective 4/18/21. Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-010, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-265 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, any of the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course or dismissal from an academic program. Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on campus property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.

(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such person when requested to do so.

(8) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view;

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission; or

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) Hazing. ((Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.))

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group; and

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) Alcohol, drug, and tobacco violations.

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including ((twenty-five)) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building

owned, leased, or operated by the college, except in designated areas. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.

(11) Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) Discriminatory conduct. Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-355 (supplemental Title IX student conduct procedures).

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational programs;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. "Sexual violence" is a type of discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of (eighteen) 18.

(iv) Statutory rape. Consensual intercourse between a person who is ((eighteen)) 18 years of age or older, and a person who is under the age of ((sixteen)) 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For the purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) Harassment. Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status, or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) Misuse of electronic resources. Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) Procedural interference. Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Disruption or interference with the orderly conduct of a proceeding;

(b) Interfering with someone else's proper participation in a proceeding;

(c) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness; or

(d) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member.

(19) Safety violations. Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment, triggering false alarms or other emergency response systems, or operating a motor vehicle on college property in a manner which is reasonably perceived as threatening the health or safety of another person.

(20) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(21) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violations of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130. WSR 21-07-085, amended and recodified as § 495B-121-265, filed 3/18/21, effective 4/18/21. Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-040, filed 3/30/16, effective 4/30/16.]

NEW SECTION

WAC 495B-121-286 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495B-121-265(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

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WSR 22-18-076

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed September 2, 2022, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-008.

Title of Rule and Other Identifying Information: WAC 246-320-011
Department responsibilities—Licensing—Adjudicative proceeding; and
new WAC 246-320-013 Department responsibilities—Enforcement. The department of health (department) is proposing a severity matrix for civil fines related to acute care hospital enforcement in order to implement 2SHB 1148 (chapter 61, Laws of 2021).

Hearing Location(s): On October 11, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department of health (DOH) will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_KqecnygxTg-ZJ4kaojdQzg. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: October 18, 2022.

Submit Written Comments to: Julie Tomaro, P.O. Box 47843, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by October 11, 2022.

Assistance for Persons with Disabilities: Contact Julie Tomaro, phone 360-236-2937, fax 360-236-2321, TTY 711, email julie.tomaro@doh.wa.gov, by October 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 246-320-011 and create new WAC 246-320-013 to establish a severity matrix for civil fines for licensed acute care hospitals. Section 2 of 2SHB 1148 allows the department, under RCW 43.70.095, to assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a hospital licensed under chapter 70.41 RCW, when the department determines: (1) The hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; (2) the hospital has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule; or (3) the hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department. The proposed rule sets these fine amounts and establishes a matrix of severity and process by which they will be applied.

Reasons Supporting Proposal: In 2021, 2SHB 1148 was passed, which requires the department to adopt rules establishing specific fine amounts for licensed acute care hospitals in relation to: (1) The severity of the noncompliance and at an adequate level to be a deterrent to future noncompliance; and (2) the number of licensed beds and the operation size of the hospital. The department conducted workshops and solicited input from interested parties in order to create a fair yet binding regulation that addresses the intent of the bill.

Statutory Authority for Adoption: RCW 70.41.030.

Statute Being Implemented: 2SHB 1148 (chapter 61, Laws of 2021); RCW 70.41.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Julie Tomaro, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2937.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Julie Tomaro, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2937, TTY 711, email julie.tomaro@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This proposed rule only applies to licensed acute care hospitals; these do not meet the definition of "small business" in RCW 18.85.020. Additionally, the proposed rule establishes fine amounts in relation to the severity of noncompliance that would only be assessed on an acute care hospital that repeatedly did not comply with regulations; the rule does not impose costs for compliance with regulations.

Scope of exemption for rule proposal:

Is fully exempt.

September 2, 2022
Todd Mountin, PMP
Deputy Secretary of Operations
for Umair A. Shah, MD, MPH
Secretary

OTS-3896.2

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-011 Department responsibilities—Licensing—Adjudicative proceeding. This section identifies the actions and responsibilities of the department for licensing hospitals.

(1) Before issuing an initial license, the department will verify compliance with chapter 70.41 RCW and this chapter which includes, but is not limited to:

- (a) Approval of construction documents;
- (b) Receipt of a certificate of need as provided in chapter 70.38 RCW;
- (c) Approval by the local jurisdiction of all local codes and ordinances and the permit to occupy;
- (d) Approval of the initial license application;
- (e) Receipt of the correct license fee;
- (f) Compliance with the on-site survey conducted by the state fire marshal required in RCW 70.41.080; and
- (g) Conduct an on-site licensing survey in accordance with WAC 246-320-016.

(2) The department may issue a license to include two or more buildings, if the applicant:

(a) Meets the requirements listed in subsection (1) of this section;

(b) Operates the buildings as an integrated system with:

(i) Governance by a single authority over all buildings or portions of buildings;

(ii) A single medical staff for all hospital facilities; and

(iii) Use all policies and procedures for all facilities and departments.

(c) Arranges for safe and appropriate transport of patients between all facilities and buildings.

(3) Before reissuing a license, the department will:

(a) Verify compliance with the on-site survey conducted by the state fire marshal required in RCW 70.41.080;

(b) Review and accept the annual hospital update information documentation;

(c) Assure receipt of the correct annual fee; and

(d) Reissue licenses as often as necessary each calendar year so that approximately one-third of the hospital licenses expire on the last day of the calendar year.

(4) The department may issue a provisional license to allow the operation of a hospital, if the department determines that the applicant or licensed hospital failed to comply with chapter 70.41 RCW or this chapter.

((5) The department may deny, suspend, modify, or revoke a license when it finds an applicant or hospital has failed or refused to comply with chapter 70.41 RCW or this chapter. The department's notice of a license denial, suspension, modification, or revocation will be consistent with RCW 43.70.115. The proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 or 246-10 WAC, this chapter governs.))

[Statutory Authority: Chapter 70.41 RCW and RCW 43.70.040. WSR 09-07-050, § 246-320-011, filed 3/11/09, effective 4/11/09.]

NEW SECTION

WAC 246-320-013 Department responsibilities—Enforcement. (1)

The department may deny, suspend, modify, or revoke a license when it finds an applicant or hospital has failed or refused to comply with chapter 70.41 RCW or this chapter. The department's notice of a license denial, suspension, modification, or revocation will be consistent with RCW 43.70.115. The proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 or 246-10 WAC, this chapter governs.

(2) The department may assess civil fines on a hospital according to RCW 70.41.130.

(a) The department may assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a hospital when:

(i) The hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(ii) The hospital has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule; or

(iii) The hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(b) The department will assess civil fine amounts based on the scope and severity of the violation(s) and in compliance with (g) and (h) of this subsection:

(c) The "severity of the violation" will be considered when determining fines. Levels of severity are categorized as follows:

(i) "**Low**" means harm could happen but would be rare. The violation undermines safety or quality or contributes to an unsafe environment but is very unlikely to directly contribute to harm;

(ii) "**Moderate**" means harm could happen occasionally. The violation could cause harm directly but is more likely to cause harm as a continuing factor in the presence of special circumstances or additional failures. If the deficient practice continues, it would be possible that harm could occur but only in certain situations or patients;

(iii) "**High**" means harm could happen at any time or did happen. The violation could directly lead to harm without the need for other significant circumstances or failures. If the deficient practice continues, it would be likely that harm could happen at any time to any patient.

(d) Factors the department will consider when determining the severity of the violation include:

(i) Whether harm to the patient(s) has occurred, or could occur;

(ii) The impact of the actual or potential harm on the patient(s);

(iii) The degree to which the hospital demonstrated noncompliance with requirements, procedures, policies or protocols;

(iv) The degree to which the hospital failed to meet the patient's physical, mental, and psychosocial well-being; and

(v) Whether a fine at a lower severity has been levied and the condition or deficiency related to the violation has not been adequately resolved.

(e) The scope of the violation is the frequency, incidence, or extent of the occurrence of the violation(s). The levels of scope are defined as follows:

(i) "**Limited**" means a unique occurrence of the deficient practice that is not representative of routine or regular practice and has the potential to impact only one or a very limited number of patients, visitors, or staff. It is an outlier. The scope of the violation is limited when one or a very limited number of patients are affected or one or a very limited number of staff are involved, or the deficiency occurs in a very limited number of locations.

(ii) "**Pattern**" means multiple occurrences of the deficient practice, or a single occurrence that has the potential to impact more than a limited number of patients, visitors, or staff. It is a process variation. The scope of the violation becomes a pattern when more than a very limited number of patients are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same patient(s) have been affected by repeated occurrences of the same deficient practice.

(iii) "**Widespread**" means the deficient practice is pervasive in the facility or represents a systemic failure or has the potential to impact most or all patients, visitors, or staff. It is a process failure. Widespread scope refers to the entire organization, not just a subset of patients or one unit.

(f) When determining the scope of the violation, the department will also consider the duration of time that has passed between repeat violations, up to a maximum of two prior survey cycles.

(g) The department will consider the operation size of the hospital and the number of licensed beds when assessing a civil fine based on the following tables:

Table 1: 0-25 and 26-99 licensed beds

Fine Amounts in Relation to the Scope and Severity of the Violation			
Scope	Severity		
	Low	Moderate	High
Limited	\$500 - \$550	\$1,000 - \$1,100	\$2,000 - \$2,200
Pattern	\$1,000 - \$1,100	\$2,000 - \$2,200	\$4,000 - \$4,400
Widespread	\$1,500 - \$1,650	\$3,000 - \$3,300	\$5,000 - \$5,500

Table 2: 100-299 licensed beds

Fine Amounts in Relation to the Scope and Severity of the Violation			
Scope	Severity		
	Low	Moderate	High
Limited	\$500 - \$650	\$1,000 - \$1,300	\$2,000 - \$2,600
Pattern	\$1,000 - \$1,300	\$2,000 - \$2,600	\$4,000 - \$5,200
Widespread	\$1,500 - \$1,950	\$3,000 - \$3,900	\$5,000 - \$6,500

Table 3: 300+ licensed beds

Fine Amounts in Relation to the Scope and Severity of the Violation			
Scope	Severity		
	Low	Moderate	High
Limited	\$500 - \$1,000	\$1,000 - \$2,000	\$2,000 - \$4,000
Pattern	\$1,000 - \$2,000	\$2,000 - \$4,000	\$4,000 - \$8,000
Widespread	\$1,500 - \$3,000	\$3,000 - \$6,000	\$5,000 - \$10,000

(h) The department may assess a civil fine that is higher than the maximum fine amounts in (g) of this subsection, not to exceed \$10,000 per violation, if it determines that the maximum fine amounts listed in (g) of this subsection would not be sufficient to deter future noncompliance.

(i) A hospital may appeal the department's action of assessing civil fines under RCW 43.70.095.

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**WSR 22-18-082
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2022-07—Filed September 6, 2022, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-072.

Title of Rule and Other Identifying Information: Small pharmacies reporting requirements: Reimbursement appeals.

Hearing Location(s): On October 18, 2022, at 10:00 a.m., via Zoom. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/small-pharmacies-reporting-requirements-reimbursement-appeals-r-2022-07>.

Date of Intended Adoption: October 24, 2022.

Submit Written Comments to: Barb Jones, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, email rulescoordinator@oic.wa.gov, www.insurance.wa.gov, by October 24, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by October 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The tier II appeals process for small pharmacy reimbursement settlements with pharmacy benefit managers has changed such that initial intake of appeals to OIC are no longer handled by OIC's hearing unit. The actual review of tier II appeals are conducted by an administrative law judge at the office of administrative hearings (OAH). The small pharmacy reimbursement appeals unit within OIC closed March 2021. These updates are necessary to conform to current procedures for process/review, to change to electronic filing, and remove the requirement for sensitive information to be filed with an appeal.

Reasons Supporting Proposal: The electronic process is set up to improve the security of the files and protect personal health information. The online process is more efficient and cost-effective than the delivery of paper documents to OIC.

Statutory Authority for Adoption: RCW 48.02.060, 48.200.280(6), 34.05.485 (1)(c), 48.02.100.

Statute Being Implemented: RCW 48.200.280(6).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Barb Jones, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, 360-725-7041; Implementation: Scott Kipper, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7007; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7050.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@OIC.wa.gov.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The tier II appeals process for small pharmacy reimbursement settlements with pharmacy benefit manager has changed such that initial intake of appeals to OIC are no longer handled by OIC's hearings unit. The actual review of tier II appeals are conducted by an administrative law judge at OAH. The small pharmacy reimbursement appeals unit within OIC closed March 2021. These updates are necessary to conform to current procedures for process/review, to update with emphasis on electronic process (versus mailing), and remove the requirement for sensitive information to be filed with an appeal.

The commissioner is pursuing rule making to amend existing rules under subchapter E of chapter 284-180 WAC that affect the revised reporting requirements by the hearings unit for appeals received from small pharmacies regarding reimbursement settlements with pharmacy benefit managers which will be referred to OAH.

Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry ..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... to determine whether the proposed rule will have a disproportionate cost impact on small businesses."

This rule proposal is exempt from requirements of the Regulatory Fairness Act. Based on findings in the cost-benefit analysis, the costs of compliance estimated by OIC are minor costs on businesses as defined by RCW 19.85.020(2).

The proposed rule would require small pharmacies to file an appeal of the pharmacy benefit manager's decision electronically, as opposed to a written form. Additionally, small pharmacies will no longer be required to include the network pharmacy's federal identification number, or the unified business identifier number in the appeal.

Previously, small pharmacies were required to deliver the petition for review to the insurance commissioner's office by mail or hand delivery. By requiring the petitions for review to be submitted electronically, the submitting small pharmacies will save on the costs of hand delivering or filing. This analysis estimates the cost of mailing petitions for review to OIC. Assumptions for this analysis include the cost of postage and mailing supplies, the number of appeals a small pharmacy submits each year, and the employee wage as well as the hours worked of the individual who is responsible for collecting the documentation and submitting.

Mailing Cost Parameters	Cost
Stamp	\$0.60
Envelope	\$1.20
Time to mail (hours)	3
Employee rate per hour	\$25.00

Based on these parameters, the cost per appeal submission is **\$76.80** when mailing the petition for review. Similarly, assumptions were used to determine the cost of electronic filing. For electronic filing, there are no mailing costs, just the time to collect the necessary documents and submit. Because of the increased simplicity of

filings, the time to submit is estimated to be less than when mailing (or hand delivering).

E-Filing Cost Parameters	Cost
Time to file (hours)	1.5
Employee rate per hour	\$25.00

OIC has data on the number of appeal petitions filed by small pharmacies dating back to 2017. In 2017, there were 50 filed petitions for review, in 2018 there were 15, in 2019 there were 23, and in 2020 there were 156. Over this four-year period, 10 distinct small pharmacies filed appeal petitions, with an average of 8.4 filings per pharmacy. Assuming a small pharmacy files 8.4 appeals per year, the estimated cost per year for mailing the appeals for review is \$645.12, whereas the cost for e-filing the same number of appeals is estimated to be \$315.00.

Filing Type	Annual Cost
Mailing	\$645.12
E-filing	\$315.00

Assuming a small pharmacy files 8.4 appeal petitions for review each year on average, the annual cost savings of electronic filing would amount to **\$330.12**, based on the assumptions used in this analysis. Based on these findings, there are no costs to small pharmacies for the implementation of this rule. Therefore, the rule does not impose more-than-minor costs on small pharmacies. For reference, below is a table detailing the one percent of annual payroll and 0.3 percent of annual revenue for pharmacies and drug stores (NAICS code 446110) that denote the minor cost threshold.

Entity	1% of Annual Payroll	0.3% of Annual Revenue	Minor Cost Estimate
Pharmacies and drug stores	\$6,639.73	\$53,119.28	\$0

Per RCW 19.85.030 (1)(a), an agency does not need to prepare a full SBEIS if the proposed rule does not impose more-than-minor costs on businesses in an industry. OIC determines that this rule is exempt from full SBEIS requirements, as the proposed rule does not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2) based on OIC's analysis of the impacts of the rule.

A copy of the detailed cost calculations may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email simon.casson@oic.wa.gov.

September 6, 2022
Mike Kreidler
Insurance Commissioner

OTS-4037.2

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-515 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs (reimbursement). WAC 284-180-500 through 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal (second tier appeal) of the pharmacy benefit manager's decision in the first tier appeal ((~~second tier appeal~~))) through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, amended and recodified as § 284-180-515, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-410, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-520 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by ((~~filing a written petition for review form. A form for this purpose is available~~)) submitting a petition at www.insurance.wa.gov according to the filing instructions.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's ((~~federal identification number, unified business identifier number,~~)) business address((~~,~~)) and mailing address; and

(iii) Documents supporting the appeal;

(c) Documents supporting the appeal include:

(i) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to

the pharmacy in response to the first tier review, if any (if the pharmacy benefit manager has not issued a decision on the first tier appeal in a timely manner, a signed attestation to that fact must be submitted by the appealing pharmacy);

((iv)) (ii) Documentation evidencing the net amount paid for the drug by the small pharmacy;

((v)) (iii) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the pharmacy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

((vi)) (iv) Any additional information that the commissioner may require (–

(e) ~~The network pharmacy must deliver the petition for review to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available~~);

(d) The network pharmacy must file the petition for review with the commissioner within ((thirty)) 30 days of receipt of the pharmacy benefit manager's decision or within 30 days after the deadline for the pharmacy benefit manager's deadline for responding to the first tier appeal; ((and))

(e) The network pharmacy making the appeal must have less than ((fifteen)) 15 retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must ((state)) include a signed attestation that this requirement is satisfied (, and must be signed and verified by an officer or authorized representative of the network pharmacy); and

(f) Electronic signatures and electronic records may be used to facilitate electronic transactions consistent with the Uniform Electronic Transactions Act chapter 1.80 RCW.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within ((thirty)) 30 calendar days of the receipt of the network pharmacy's complete petition for review. A complete petition for review means that all requirements under (1) of this subsection have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, issuing civil penalties pursuant to RCW 48.200.290, or ((may take)) taking other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address and telephone number of the presiding officer, if known;

(d) A statement of the time, place and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) Appearance and practice at a brief adjudicative proceeding.

The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) Method of response. Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multi-source generic drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) Hearings by telephone. If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) Presiding officer.

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) Entry of orders.

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within (~~ten~~) 10 days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the (~~ten-day~~) 10-day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, amended and recodified as § 284-180-520, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 48.02.220 and chapter 19.340 RCW. WSR 18-13-023, § 284-180-420, filed 6/8/18, effective 7/9/18. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-420, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-530 Review of initial orders from brief adjudicative proceedings. The following procedure applies to the commissioner's review of a brief adjudicative proceeding conducted pursuant to WAC 284-180-520, unless the matter is converted to a formal proceeding as provided in WAC 284-180-540(4).

(1) **Request for review of initial order.** A party to a brief adjudicative proceeding under WAC 284-180-520 may request review of the initial order by filing a written petition for review with the commissioner within (~~twenty-one~~) 21 days after service of the initial order is received or deemed to be received by the party. A form for this

purpose is available at www.insurance.wa.gov. The request for review must be ((in writing and delivered to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available)) submitted electronically.

(a) When making a petition for review of the initial order, the petitioner must submit to the reviewing officer any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) The commissioner may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(2) **Reviewing officer.** The commissioner shall appoint a reviewing officer who satisfies the requirements of RCW 34.05.491(2). The reviewing officer shall:

(a) Make such determination as may appear to be just and lawful;

(b) Provide both the network pharmacy and the pharmacy benefit manager an opportunity to explain their positions on the matter; and

(c) Make any inquiries necessary to determine whether the proceeding should be converted to a formal adjudicative proceeding. The review is governed by the brief adjudicative procedures of chapter 34.05 RCW and this rule, or WAC 284-02-070 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding. The reviewing officer shall have the authority of a presiding officer as provided in WAC 284-180-520.

(3) **Record review.**

(a) Review of an initial order is limited to:

(i) The evidence that the presiding officer considered;

(ii) The initial order;

(iii) The recording of the initial proceeding; and

(iv) Any records and written evidence that the parties submitted to the reviewing officer.

(b) However, the record that the presiding officer made does not need to constitute the exclusive basis for the reviewing officer's decision.

(c) The reviewing officer may request additional evidence from either party at any time during review of the initial order. After the reviewing officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, under the use of discretion, allows additional time to submit the evidence.

(d) If the reviewing officer determines that oral testimony is needed, the officer may schedule a time for both parties to present oral testimony. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer to be in person.

(e) Each party will have an opportunity to respond to the other party's request for review and may also submit any other relevant evidence and written material to the reviewing officer.

(i) The other party must:

(A) Submit material within seven days of service of the material submitted by the party requesting review of the initial order; and

(B) Serve a copy of all evidence and written material provided to the reviewing officer to the party requesting review according to WAC 284-180-540(2).

(ii) Proof of service is required under WAC 284-180-540 (2)(g) when a party submits material to the other party under this subsection.

(4) **Failure to participate.** If a party requesting review of an initial order under subsection (1) of this section fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon request, the reviewing officer may uphold the initial order based upon the record.

(5) **Final orders.**

(a) The reviewing officer's final order must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision.

(b) Unless there are continuances, the reviewing officer will issue the final order within ((twenty)) 20 days of the petition for review.

(6) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the commissioner. A petitioner may only seek a reconsideration of the reviewing officer's order if the final order contains a right to a reconsideration.

(7) **Judicial review.** Judicial review of the final order of the commissioner is available under Part V, chapter 34.05 RCW. However, as required by RCW 34.05.534, judicial review may be available only if the petitioner has requested a review of the initial order under this subsection and has exhausted all other administrative remedies.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, amended and recodified as § 284-180-530, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-430, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

WAC 284-180-540 General procedures governing brief adjudicative proceedings before the commissioner. (1) **Rules of evidence - Record of the proceeding.**

(a) Evidence is admissible if in the judgment of the presiding or reviewing officer it is the kind of evidence on which reasonably prudent persons are accustomed to relying on in conducting their affairs. The presiding and reviewing officer should apply RCW 34.05.452 when ruling on evidentiary issues in the proceeding.

(b) All oral testimony must be recorded manually, electronically, or by another type of recording device. The agency record must consist of the documents regarding the matters that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records must be maintained by the commissioner as its official record.

(2) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the network pharmacy and the pharmacy benefit manager.

((a) Service is made by one of the following methods:

((i) In person;

((ii) By first-class, registered, or certified mail;

((iii) By fax and same-day mailing of copies;

((iv) By commercial parcel delivery company; or

(v)) By electronic delivery as allowed by the presiding officer.

((b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.)

((c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.)

((d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.)

((e)) Service by electronic delivery is regarded as completed on the date that any party electronically sends the information to other parties or electronically notifies other parties that the information is available for them to access.

((f) For matters before the reviewing officer, service to the reviewing officer must be sent to:

Office of the Insurance Commissioner
P.O. Box 40255
Olympia, Washington 98504-0255

((g) Where proof of service is required, the proof of service must include:

((i) An acknowledgment of service;

((ii) A certification, signed by the person who served the document, stating the date of service; that the person served the document upon all or one or more of the parties of record in the proceeding by delivering a copy in person to the recipient; and that the service was accomplished by a method of service as provided in this subsection.))

(3) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding or reviewing officer may at any time, on motion of either party or on the officer's own motion, convert the brief adjudicative proceeding to a formal proceeding. The presiding or reviewing officer may convert the proceeding if the officer finds that:

(a) Use of the brief adjudicative proceeding violates any provision of law;

(b) The protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties; or

(c) The issues and interests involved warrant the use of procedures governed by RCW 34.05.413 through 34.05.476 or 34.05.479.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, recodified as § 284-180-540, filed 12/29/20, effective 1/1/22; WSR 21-02-034, § 284-180-440, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-440, filed 12/20/16, effective 1/1/17.]

WSR 22-18-084
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed September 6, 2022, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-117.

Title of Rule and Other Identifying Information: WAC 363-116-082
Limitations on new pilots.

Hearing Location(s): On October 20, 2022, at 10:00 a.m., via Microsoft Teams and/or phone conference 206-531-0324, ID 928096063#. To request a video link, please call 206-515-3887 or visit www.pilotage.wa.gov for call-in instructions.

Date of Intended Adoption: October 20, 2022.

Submit Written Comments to: Jaimie Bever, Executive Director, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, by October 13, 2022.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, email HamelJ@wsdot.wa.gov, by October 13, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to consider revisions to the pilot license upgrade programs in both the Puget Sound and Grays Harbor Pilotage Districts to better align with statutory rest rules and changes in vessel traffic. The board seeks to ensure that upgrading pilots are gaining the necessary experience with larger vessels as they progress through their first five years of piloting while also maintaining best practices in fatigue mitigation and reducing stress on the pilot corps.

Reasons Supporting Proposal: The proposed revisions to the pilot upgrade program will allow for more flexibility in upgrade program design, implement statutory rest rules, provide more availability for pilots to take jobs, reduce workload on pilots, allow for cruise ship upgrades, allow pilots to upgrade in more adverse weather, increase experience practicing speed from anchor as well as docking and undocking via harbor shifts, and provides better clarity to develop the upgrade trips and for upgrading pilots to accommodate the trip requirements while actively piloting.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board received a recommendation from the trainee evaluation committee (TEC) favoring implementation of the proposed language based on the benefits listed above. TEC develops and monitors the pilot license upgrade program.

Name of Proponent: Washington state board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

September 6, 2022
Jaimie C. Bever
Executive Director

OTS-4063.1

AMENDATORY SECTION (Amending WSR 20-12-065, filed 6/1/20, effective 7/2/20)

WAC 363-116-082 Limitations on new pilots. (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during ((his/her)) their first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - License limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels	Waterways
1	Piloting on vessels of any size prohibited	38,000 GT (ITC) except for passenger vessels which may only have a maximum size of 5000 GT (ITC)	Prohibited in the Duwamish Waterway on vessels greater than 3,000 GT
2	32,000 GT (ITC)	48,000 GT (ITC)	No restrictions
3	40,000 GT (ITC)	60,000 GT (ITC)	No restrictions
4	50,000 GT (ITC)	70,000 GT (ITC)	No restrictions
5	65,000 GT (ITC)	95,000 GT (ITC)	No restrictions

(3) Puget Sound pilotage district - Pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend

to the board a series of ((eight)) trips to be made by each pilot in the last ((one hundred twenty)) 180 days of each year of the license limitation periods specified in subsection (2) of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, ((or)) between the pilot station and a port, or harbor shifts. The supervising pilots shall complete and submit to the board ((an evaluation)) a familiarization form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - License limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	32,000 GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	15,000 GT (ITC)	42,000 GT (ITC)
3	32,000 GT (ITC)	52,000 GT (ITC)
4	42,000 GT (ITC)	62,000 GT (ITC)
5	52,000 GT (ITC)	72,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - Pilot license upgrade requirements - Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of trips to be made by each pilot in the last 180 days of each year of the license limitation periods specified in subsection (4) of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel;

origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, between the pilot station and a port, or harbor shifts. The supervising pilots shall complete and submit to the board a familiarization form provided by the board for each trip a new pilot performs.

((a)) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River Bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 32,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of 15,000 GT (ITC) and two trips on other vessels in excess of 42,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the two upgrade trips upon other vessels in excess of 42,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make two license upgrade trips on tank vessels in excess of 32,000 GT (ITC) and two trips on other vessels in excess of 52,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 42,000 GT (ITC) and two trips on other vessels in excess of 62,000 GT (ITC).

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 52,000 GT (ITC) and two trips on other vessels in excess of 72,000 GT (ITC).

((f))) If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with ((a) through (e) of)) this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for ((forty-five))

~~45 days or more in any one of the five years ((, he/she shall notify the board and request a revised schedule of limitations)) the trainee evaluation committee may put a hold on the upgrade program. Upon the newly licensed pilot's return to the program, the trainee evaluation committee may prescribe an extension.~~

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of ((his/her)) their license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided ((he/she has)) they have submitted to the board a statement attesting to the fact that ((he/she)) the pilot has completed all the required license upgrade trips and the vessel simulator courses.

(9) Whenever the governor issues a proclamation declaring a state of emergency, the board may determine whether there is a threat to trainees, pilots, vessel crews, or members of the public. Notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the pilot training program during the pendency of a state of emergency lawfully declared by the governor.

[Statutory Authority: Chapter 88.16 RCW. WSR 20-12-065, § 363-116-082, filed 6/1/20, effective 7/2/20; WSR 19-06-007, § 363-116-082, filed 2/22/19, effective 3/25/19; WSR 15-04-136, § 363-116-082, filed 2/4/15, effective 3/7/15. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-082, filed 7/21/08, effective 8/21/08. Statutory Authority: RCW 88.16.105 and 88.16.035. WSR 07-17-148, § 363-116-082, filed 8/21/07, effective 9/21/07. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-082, filed 8/29/05, effective 10/1/05. Statutory Authority: RCW 88.16.105 and 88.16.035. WSR 05-04-028, § 363-116-082, filed 1/26/05, effective 2/26/05. Statutory Authority: RCW 88.16.105. WSR 99-08-003, § 363-116-082, filed 3/25/99, effective 4/25/99; WSR 97-14-032, § 363-116-082, filed 6/25/97, effective 7/26/97. WSR 97-08-042, recodified as § 363-116-082, filed 3/28/97, effective 3/28/97. Statutory Authority: RCW 88.16.035 and 88.16.105. WSR 93-09-016, § 296-116-082, filed 4/14/93, effective 5/15/93. Statutory Authority: RCW 88.16.105. WSR 92-24-056, § 296-116-082, filed 11/30/92, effective 12/31/92; WSR 92-08-051, § 296-116-082, filed 3/26/92, effective 4/26/92; WSR 89-18-063 (Order 89-6, Resolution No. 89-6), § 296-116-082, filed 9/1/89, effective 10/2/89; WSR 89-11-060 (Order 89-5, Resolution No. 89-5), § 296-116-082, filed 5/18/89. Statutory Authority: RCW 88.16.035. WSR 80-03-081 (Order 79-6, Resolution No. 79-6), § 296-116-082, filed 3/4/80.]

WSR 22-18-093

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 7, 2022, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-137.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks, sale of motor fuel, and penalties for violations. The department is proposing amendments as required in chapter 238, Laws of 2021 (2SSB 5192) regarding electric vehicle supply equipment (EVSE). The amendments include:

- Updating the chapter title to reflect that the sale of electric vehicle fuel is now regulated under this chapter.
- Establishing EVSE compliance dates and creating an exemption for EVSE installed prior to January 1, 2024, that are clearly marked.
- Requiring all electric vehicle service providers (EVSP) make available multiple payment methods at all publicly available Level 2 EVSE or direct current fast charger (DCFC) EVSE installed in Washington and establishing minimum required payment methods.
- Requiring EVSP to provide means for conducting a charging session in at least one language other than English.
- Establishing requirements for all EVSP to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 and DCFC EVSE.

Hearing Location(s): On October 11, 2022, at 10:00 a.m., Microsoft Teams conference line. Join by link https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_NzcwNmJiNDgtNmYzNS00ZDBmLThkYzEtYjYxZTziNGY2Y2E1%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%2522838c5c7-c187-44ae-8de0-2be684ce5d4a%2522%257d&data=05%7C01%7CAClow%40agr.wa.gov%7Cb1f5cf12d40e475655b208da85f0ad52%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C637969565991353972%7CUnknown%7CTWFpbGZsb3d8eyJWIjoimC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=CRgIpFbMBF1nxYSmHT0sRT49xNGGhmHOb3K4WhlxMoY%3D&reserved=0, Meeting ID 279 455 689 244, Passcode QQYbqM; join by phone +1 564-999-2000,,628782674# United States, Olympia, Phone Conference ID 628 782 674#. Due to the ongoing COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: October 18, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., October 11, 2022.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by October 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2021 legislative session, the Washington state legislature passed 2SSB 5192, amending chapter 19.94 RCW. This legislation directed the department to adopt rules regarding compliance dates, methods of payment, providing access in languages other than English and interoperability standards for publicly available EVSE.

There are currently over 63,000 electric vehicles registered in Washington, 46,000 of which are battery electric vehicles powered solely by electric energy stored in batteries which must be recharged by an external source. According to the United States Department of Energy's Alternative Fuels Data Center there are currently 1,778 electric vehicle charging stations and 4,417 charging ports in Washington. The most common electric vehicle charging stations for the traveling public are Level 2 and direct current (DC) fast chargers.

Publicly available EVSE is defined as EVSE and associated parking space or spaces designated by a property owner to be available to the public. EVSE that meet any of the following criteria are also considered publicly available:

- EVSE designated by the property owner to be available only to customers or visitors of a business or of a charging network;
- EVSE that can be accessed by any member of the public regardless of whether a fee is charged including EVSE located in a parking garage or gated facility; or
- EVSE made available to the public during limited time periods are considered publicly available only during those time periods.

Amendments to chapter 19.94 RCW require the department to adopt rules by January 1, 2023, requiring all EVSP make multiple payment methods available at all public Level 2 and DC fast chargers. At a minimum, the rules must include:

- Deadlines for compliance for Level 2 and DC fast chargers installed before a specific date;
- Deadlines for compliance for Level 2 and DC fast chargers installed after a specific date;
- Minimum required payment methods that are convenient and reasonably support access for all current and future users;
- Means for conducting a charging session in languages other than English; and
- Means for facilitating charging sessions for consumers who are unbanked, underbanked, or low-moderate income.

The amendments to chapter 19.94 RCW also require the department to adopt rules by January 1, 2023, establishing requirements for all EVSE to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 and DC fast chargers. Interoperability means the ability of hardware, systems, software, or a communication network provided by one service provider to interact with and exchange information, including payment information, between hardware, software, or a communication network provided by a different service provider.

The proposed amendments and their anticipated effects include:

- *Establishing EVSE compliance dates and creating an exemption for EVSE installed prior to January 1, 2024, that are clearly marked.* The department is required to establish compliance dates for publicly available Level 2 and DC fast charger EVSE installed prior to, on, or after a specific date, under RCW 19.94.565. The compliance dates set a deadline for when EVSE must be in compliance with the proposed rule amendments. In addition to compliance dates, an exemption is created for publicly available Level 2 and DC fast charger EVSE installed prior to January 1, 2024, which are clearly marked with the installation date. To ensure existing infrastructure may continue operating without substantial equip-

ment replacement or alteration, the language added in rule reiterates the compliance dates set in RCW 19.94.190(6), which state that EVSE installed and placed into service before January 1, 2024, are exempt from these rules until January 1, 2034, as long as they are clearly marked with the date of installation and that any EVSE installed and placed into service (including those placed or retrofitted) after January 1, 2024, must be in compliance with these rules upon installation.

- *Requiring all EVSP make available multiple payment methods at all publicly available Level 2 EVSE or DC fast charger EVSE installed in Washington and establishing minimum required payment methods.* This component of the rule establishes the following minimum required payment methods that are convenient and reasonably support access for all current and future users at publicly available Level 2 and DC fast chargers, as specified in RCW 19.95.565:
 - Toll-free number or built-in call button that provides the user the option to initiate a charging session and submit payment at any time that EVSE is operational and publicly available;
 - Credit card reader device that can accept, at a minimum, a Euro Mastercard Visa (EMV) chip; and
 - A mobile payment option.
- *EVSP must provide means for conducting a charging session in at least one language other than English.* RCW 19.94.565 (1)(f) requires the department to adopt rules requiring all EVSPs to provide a means for conducting a charging session in languages other than English. The proposed rule sets the minimum requirement that at least one language other than English be supported. However, since many languages are spoken throughout Washington state, the department is including in the rule a requirement that service providers consider the demographics of the area in which the unit will be installed and the languages most commonly spoken in that location when determining the alternative language(s) provided, to ensure that the language(s) most relevant to the community where an EVSE unit is located are represented.
- *Establishing requirements for all EVSPs to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 EVSE and DC fast charger EVSE.* Interoperability standards provide safeguards to consumers and allow for a reliable, standardized and easy refueling experience. In order for Washington to have reliable, accessible, and competitive markets for EVSE that are necessary for the movement of goods and people by electric vehicles, interoperability standards that align with national and international best practices or standards are necessary. In the case of electric vehicle chargers that have communication capabilities or are "networked," interoperability between EVSE and network provider also helps site hosts and other owner/operators of charging equipment to minimize the risk of "stranded assets" with equipment that isn't capable of functioning on different vehicles and charging networks, while also supporting the development of vehicle-grid integration. Unfortunately, there is currently no set of uniform national standards for interoperability. The open charge point protocol and open charge point interface are global industry standards that are well established and involve the transfer of charging data and information between charging stations and network providers as well as facilitating payment between various electric vehicle charging

networks. By requiring in rule for EVSPs to utilize these two standards, the department is ensuring that Washington state will have a reliable, accessible and competitive market for EVSE.

Reasons Supporting Proposal: Setting compliance dates gives EVSPs time to meet the requirements outlined in the proposed rule amendment, while also providing a clear timeline for the consumer. For EVSE installed prior to January 1, 2024, to be considered exempt from compliance requirements, the installation date must be clearly marked in a conspicuous location that is easily seen during normal use by an inspector and the public. The exemption itself provides some flexibility to EVSP and there are multiple ways in which EVSE can be marked. Since the average life span of an EVSE is approximately 10 years, this would mean that EVSPs would not be required to replace or alter any of the EVSE currently installed, with the exception of just labeling the unit with the date of installation. This also allows consumers and department inspectors to more easily identify EVSE that must follow the proposed requirements.

Requiring charging stations to provide three payment options ensures that electric vehicle drivers are able to pay for their charging session in a familiar way and makes access to charging an electric vehicle available to all. These payment options utilize three different technologies, ensuring that if the technology behind one of the methods fails, the driver will still be able to pay for their charging session using one of the other methods. Requiring a physical charge card reader device will establish a level of payment method certainty for consumers (particularly those that are unbanked and underbanked) and maintain consistency along the west coast by aligning with California's EVSE standards.

Requiring service providers to offer a means for conducting a charging session in a language other than English supports electric vehicle accessibility for the nearly 20 percent of Washington residents who speak a language other than English. This approach also benefits high-mileage drivers, such as those who drive for transportation network companies (TNCs) like Uber and Lyft. According to a TNC driver survey conducted by the city of Seattle, 93 percent of drivers spoke a language other than English at home. Electrifying TNC vehicles has three times the climate impact as electrifying a privately-owned vehicle.

Establishing requirements around interoperability standards will help facilitate payments across networks. This will ultimately help electric vehicle customers. It will also help protect Washington individuals and businesses investing in electric vehicle infrastructures across the state, by lessening the risk of businesses experiencing stranded assets. Additionally, this requirement will also increase protections for EVSPs, particularly smaller ones.

Statutory Authority for Adoption: Chapter 238, Laws of 2021 (2SSB 5192); RCW 19.94.010, 19.94.190, 19.94.555, 19.94.565, 19.94.570, 19.94.575.

Statute Being Implemented: Chapter 19.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Gloriann Robinson, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1802;

Implementation and Enforcement: Tahis McQueen, 1111 Washington Street S.E., Olympia, WA 98504, 360-481-7452.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: All of the businesses impacted by the proposed rule are large businesses. The department conducted extensive research and stakeholder engagement to determine whether any small businesses were impacted by the proposed rule amendment. There are three main areas of the electric vehicle industry that will likely be impacted. These include site hosts, service providers, and utility companies. The agency surveyed and researched businesses across the state and found that there were no small businesses impacted. All businesses identified have 50 or more employees or are not located in Washington state.

Scope of exemption for rule proposal:

Is fully exempt.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email wsdarulescomments@agr.wa.gov.

September 7, 2022
Brad White
Assistant Director

OTS-4013.2

Chapter 16-662 WAC

WEIGHTS AND MEASURES—NATIONAL HANDBOOKS, SALE OF MOTOR FUEL, ELECTRIC VEHICLE SUPPLY EQUIPMENT, AND PENALTIES FOR VIOLATIONS

NEW SECTION

WAC 16-662-200 Electric vehicle supply equipment compliance

dates. (1) Any publicly available electric vehicle supply equipment, including both level 2 and direct current fast chargers, installed and placed into service before January 1, 2024, is exempt from the requirements in WAC 16-662-210 through 16-662-220 until January 1, 2034. Equipment that is replaced or retrofitted with new hardware on or after January 1, 2024, is considered to have been installed and placed into service after January 1, 2024, and must comply with the requirements in WAC 16-662-210 through 16-662-220 upon installation.

(2) Publicly available electric vehicle supply equipment that is exempt as described in subsection (1) of this section must be clearly

marked with the date of installation in a conspicuous location that is easily seen during normal use by the public. Acceptable ways to clearly mark the installation date may include:

(a) A sign, sticker, or plaque; or

(b) Any other visible marker that is readable, such as a digital display showing the installation date on the home screen or through a menu that is intuitive, making the installation date easily identified.

(c) When dates are located on a kiosk, the installation date of each electric vehicle supply equipment serviced by that kiosk shall be clearly identified.

(3) If the installation date is not clearly marked, the device will be considered to have been installed and placed into service after January 1, 2024, and will be subject to the requirements in WAC 16-662-210 through 16-662-220.

[]

NEW SECTION

WAC 16-662-210 Electric vehicle supply equipment payment method and fee disclosure requirements. (1) All publicly available electric vehicle supply equipment installed in Washington that requires payment shall meet the following requirements:

(a) Have a credit card reader device physically located on either the electric vehicle supply equipment unit or a kiosk used to service that electric vehicle supply equipment. The credit card reader device shall comply with all of the following requirements:

(i) The credit card reader device shall accept, at a minimum, the Euro MasterCard Visa (EMV) chip and, at a minimum, one of the following credit card types: Visa, MasterCard, or American Express; and

(ii) The credit card reader device shall be nonlocking and shall always permit customers to remove their credit card without damage to the card, including during a fault situation or power failure.

(b) All electric vehicle supply equipment subject to this section shall have a mobile payment device physically located on the electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment; and

(c) The electric vehicle service provider shall provide and display a toll-free number on each electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment that provides the user with the option to initiate a charging session and submit payment at any time that the electric vehicle supply equipment is operational and publicly available.

(2) At a minimum, the electric vehicle service provider shall disclose to the user, at the point of sale, the following minimum information, if applicable:

(a) A fee for use of the parking space;

(b) A nonmember plug-in fee from the electric vehicle service provider;

(c) The price to refuel in United States dollars per kilowatt-hour or mega joule;

(d) Any potential changes in the price to refuel, in United States dollars per kilowatt-hour or mega joule, due to variable pricing; and

(e) Any other fees charged for a charging session.

(3) If the charging session or portion of a charging session is offered at no cost, it must be disclosed at the location where the charging session is initiated and prior to a user or a vehicle initiating a charging session.

(4) The electric vehicle service provider may not require a subscription, membership, or account or a minimum balance on an account in order to initiate a charging session at an electric vehicle supply equipment subject to this section.

(5) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

[]

NEW SECTION

WAC 16-662-215 Electric vehicle supply equipment language requirements. (1) The electric vehicle supply equipment must provide means for conducting a charging session in at least one language other than English. The electric vehicle service provider shall consider the demographics of the area in which the unit will be installed, and the language(s) most commonly spoken in that location, when determining the alternative language(s) provided. At a minimum, electric vehicle service providers shall consult data published from the American Community Survey (ACS).

(2) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

[]

NEW SECTION

WAC 16-662-220 Interoperability requirements related to electric vehicle supply equipment. (1) All publicly available electric vehicle supply equipment must be in compliance with the following interoperability requirements:

(a) The electric vehicle service provider shall, at a minimum, use Open Charge Point Interface (OCPI) version 2.1.1 or 2.2 standards.

(b) All networked electric vehicle supply equipment shall be compliant with Open Charge Point Protocol (OCPP) version 1.6 or 2.0.1 standards.

(2) Upon request, electric vehicle service providers shall provide the department with documentation that demonstrates compliance with the requirements of this section. If a certification is available for a standard, the documentation to be provided shall include the certification, otherwise acceptable documentation may include a self-attestation by the service provider. The service provider must provide additional documentation as the department may require to demonstrate compliance.

(3) The requirements of this section shall not apply to:

(a) Electric vehicle supply equipment exempted under RCW 19.94.555.

(b) Publicly available electric vehicle supply equipment provided by a manufacturer of electric vehicles for the exclusive use by vehicles it manufactures.

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WSR 22-18-094

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed September 7, 2022, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-113.

Title of Rule and Other Identifying Information: Chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): On October 17, 2022, at 3:00 p.m., Zoom meeting. Join from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/97557328531?pwd=bHVKGhQMENUcTNRcnhzMjcrK2J5dz09>, Meeting ID 975 5732 8531, Passcode 688472; or join by telephone (long distance) +1 253 215 8782 or 97557328531# US (one tap mobile call), (enter the meeting ID and passcode when prompted). No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: November 18, 2022.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 17, 2022.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 13, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the rules regarding the standards of conduct for students.

Reasons Supporting Proposal: Washington State University (WSU) is proposing changes to the standards of conduct for students (chapter 504-26 WAC) to maintain the spirit of the chapter while simplifying processes and consolidating definitions for clarity. WSU remains committed to supporting students and recognized/registered student organizations and upholding their rights, while also holding them accountable for behavior that does not meet our community expectations. The proposed changes allow us to continue serving our community to meet these goals.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Karen Metzner, Director, Center for Community Standards, French Administration 122, Pullman, WA 99164-1012, 509-335-4532; or Holly Ashkannejhad, Director, Compliance and Civil Rights, Title IX Coordinator, Compliance and Civil Rights, French Administration 225, Pullman, WA 99164-1022, 509-335-8288; Implementation and Enforcement: Ellen Taylor, Vice President for Student Affairs, Lighty Services 360, Pullman, WA 99164-1050, 509-335-4531; or Jenna Hyatt, Assistant Vice Chancellor for Student Affairs and Dean of Students, French Administration 122, Pullman, WA 99164-1012, 509-335-5757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSU does not consider these rules to be significant legislative rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025.

Explanation of exemptions: The amendments to WSU student conduct code only apply to students at WSU, and therefore do not affect business or commerce in any way.

September 7, 2022
Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

OTS-4054.2

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-001 Preamble. Students have the responsibility to read and be familiar with the standards of conduct, to abide by them, and to understand that violations of these standards, if the student is found responsible, will result in educational sanctions. The dean of students or designee is the person designated by the university president to be responsible for the administration of the standards of conduct.

Washington State ((University's)) University has a long-standing commitment to providing students with a ((transformational)) holistic learning experience ((continues with a focus on enhancing the quality and relevance of the learning experience, providing more personalized student services, expanding learning opportunities outside the classroom, and developing a more cohesive student community. To this end,)) both in and out of the classroom. Students are expected to uphold and be accountable to ((high)) our standards of conduct ((that)) to foster a safe, healthy, and inclusive campus community. The basic philosophy behind the standards of conduct and processes is one of education, centered on student learning through personal development and accountability. Therefore, the student conduct process is designed to support students, guide and correct behaviors, challenge students to make better choices, ((and)) protect the rights ((and safety)) of all students, and support a safe environment for students, the university, and the community at large.

The university strives to provide a fair process for every student without bias or favor regardless of socioeconomic status, personal or social connections, race, ((color, creed, religion, national or ethnic origin, sex/gender)) sex and/or gender, sexual orientation, gender ((identity/expression)) identity or expression, religion, age, color, creed, national or ethnic origin, marital status, ((disability)) genetic information, ((or)) status as an honorably discharged veteran or member of the military, physical, mental, or sensory disability, including the use of a trained service animal, or immigration or citizenship status, except as authorized by federal or state law, regulation, or government contract. It also has responsibility to in-

form and educate the university community, parents, and the public at large on these standards, uphold them, and exercise the authority to take educational and/or disciplinary action accordingly.

~~((Correspondingly, students have the responsibility to read and be familiar with the standards of conduct, to abide by them, and to understand that violation of these standards, if the student is found responsible, will result in disciplinary and/or educational sanctions. The vice president for student affairs is the person designated by the university president to be responsible for the administration of the standards of conduct.))~~

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-001, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-001, filed 6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-001, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-001, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-001, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-001, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-010 Definitions. Words and phrases used in the standards of conduct regardless of their associated gender identity include all genders. Words and phrases used in the standards of conduct in the singular or plural encompass both the singular and the plural, unless the context clearly indicates otherwise. For purposes of the standards of conduct, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who, collectively, are authorized by the university ~~((or college))~~ to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(2) Academic integrity violation. A violation of the university's academic integrity expectations, which is defined as:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by CCS. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(m) Violating any other academic rule or standards specified in published course policies.

(3) Appeals board. The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider appeals from a university conduct board's or conduct officer's determination as to whether a student has violated the standards of conduct and any sanctions assigned.

((+3)) (4) Brief adjudication. The process by which a conduct officer may adjudicate student conduct matters that are not resolving allegations that would constitute Title IX sexual harassment within the university's Title IX jurisdiction, and where possible sanctions do not include suspension for more than ((ten)) 10 instructional days, expulsion, loss of recognition, or revocation of degree. Also referred to as a "conduct officer hearing" or "brief adjudicative proceeding."

((+4)) (5) CCR. The university's office of compliance and civil rights.

((+5) Cheating. Includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact. The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences.

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the center for community standards. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.)

(6) CCS. The university's center for community standards.

(7) Complainant. Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint. ((Any individual, group, or entity, including the university, who submits a complaint alleging that a student or a registered or recognized student organization violated the standards of conduct.

((7))) (8) Conduct board. The group of students, faculty, and staff, collectively authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.

((8))) (9) Conduct officer. A university official authorized by the ((vice president for student affairs)) dean of students or their designee to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.

((+9)) (10) Faculty member. For purposes of this chapter, any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

((+10)) (11) Full adjudication. The process by which a conduct board adjudicates matters involving possible suspension of greater than ((+ten)) 10 instructional days, expulsion, loss of recognition, revocation of degree, or other matters as determined by the university. Also referred to as "formal adjudication," "formal (or full) adjudicative proceeding," or "conduct board hearing."

((+11)) (12) Gender identity. Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

((+12)) (13) Member of the university community. Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the ((vice president for student affairs)) dean of students or designee.

((+13)) (14) Parties. The parties to a student conduct proceeding must include the university and the respondent. The parties in a student conduct matter where the allegations, if true, would constitute Title IX sexual harassment within the university's Title IX jurisdiction must also include the complainant(s). The university may designate other complainants ((, individuals, or recognized or registered student organizations)) as parties to conduct proceedings ((, or allow individuals or recognized or registered student organizations to intervene in conduct proceedings)).

(14) Policies. The written rules and regulations of the university as found in, but not limited to, the standards of conduct, university policy manuals, housing and dining policies, academic regulations, and the university's graduate, undergraduate, and professional catalogs and other publications, including electronic publications) including, but not limited to, harmed parties. The dean of students or their designee determines party status for complainants.

(15) Recognized or registered student organization. A group of students, collectively, that has complied with the formal requirements for university recognition or registration.

(16) Respondent. A student or recognized or registered student organization alleged to have violated these standards of conduct.

(17) Standards of conduct. The standards of conduct for students outlined in this chapter.

(18) Student. For the purposes of this chapter, any person ((taking)) who:

(a) Is enrolled in at least one undergraduate, graduate, or professional studies course((s)) at the university((, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have));

(b) Has been notified of their acceptance for admission ((are considered "students" as are persons who are living in university residence halls, even if not enrolled.

((18))) but has not yet registered for their course(s);

(c) Is eligible to reenroll in classes without reapplying.

(19) Title IX. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 and its implementing 34 C.F.R. Part 106.

((+19+)) (20) University. ((Includes all locations, premises, programs, and operations of)) Washington State University.

((+20+)) (21) University official. Any person employed by the university, performing assigned administrative or professional responsibilities.

((+21+)) (22) University premises. All land, buildings, facilities, vehicles, websites, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-010, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-010, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-010, filed 6/15/17, effective 7/16/17; WSR 16-08-014, § 504-26-010, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-010, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-010, filed 5/11/11, effective 6/11/11; WSR 07-11-030, § 504-26-010, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-010, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

((+a+)) The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

((+i+)) (a) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

((+ii+)) (b) Negatively impacted the reputation of the university or its students;

((+iii+)) (c) Occurred on the property of recognized or registered student organizations;

((+iv+)) (d) Caused physical, mental, or emotional harm to another; or

((+v+)) (e) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized or registered student organization.

((+b+)) When the university chooses to exercise jurisdiction for off-campus conduct not in connection with a university-sponsored ac-

tivity, the parties must be notified in writing of the decision and the reasons for the decision, and their right to challenge the decision to the vice president for student affairs or designee. Challenges to jurisdiction must be in writing and filed within five calendar days from the date the notice is sent. In cases implicating Washington State University's executive policy 15, the vice president for student affairs or designee must consult with the university's Title IX coordinator.)

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual ((awarding)) conferral of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards apply to a student's conduct during that time frame, even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a ((significant)) number of organization officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-015, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-015, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice, provided that person agrees to serve as an advisor, to be present during all stages of a conduct process. ((Upon a party's request,)) A list of university employees who are trained advisors ((from outside the office of the dean of students (and those offices reporting to the dean of students) who)) is provided upon a party's request. Advisors can provide support at no cost to the ((student is provided)) party. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. Advisors may not be employed in CCS.

(2) ((Communication with the center for community standards. Advisors and representatives may communicate directly with the center for community standards to receive information on dates and times of meetings, status of conduct processes, and outcomes. As a condition of participation in the conduct process, the center for community standards may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

((3))) Advisors in conduct meetings and conduct officer hearings. During any conduct meeting or conduct officer hearing, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties.

((4))) (3) Advisors in conduct board hearings. As with all other conduct meetings and conduct officer hearings, advisors are not permitted to speak on behalf of parties, except that in conduct board hearings, advisors are permitted to ask relevant cross-examination questions as instructed by a party.

((5))) (4) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. ((In conduct board hearings,)) Representatives are not permitted in conduct officer hearings; however, persons currently admitted to practice law may participate as advisors in conduct officer hearings.

(5) As a condition of participation in the conduct process, CCS may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(6) Questions regarding logistical and administrative issues are to be directed to the presiding officer or conduct officer, who may impose reasonable conditions upon participation of advisors and representatives.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-020, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-020, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-030 Consolidation. In any student conduct matter in which there are common issues or parties, ((the parties may request, or)) the conduct officer or presiding officer may decide((r)) to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-030, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-040 Presumptions and standard of proof. ((All students and registered or recognized student organizations)) Respondents are presumed "not responsible" for alleged violations. Any violation must be proven by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred. ((As part of the university's opening statement in any conduct board hearing, the university's representative must read a statement to this effect.))

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-040, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 22-07-043, filed 3/14/22, effective 4/14/22)

WAC 504-26-045 Evidence. (1) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence.

(2) The sexual history of a complainant is not relevant and not admissible in a student conduct proceeding unless such evidence about the complainant's sexual predisposition or prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(3) ((Students)) Parties may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on

the information presented at the hearing. No ((student)) party must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a ((student's)) party's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

[Statutory Authority: RCW 28B.30.150. WSR 22-07-043, § 504-26-045, filed 3/14/22, effective 4/14/22; WSR 21-07-057, § 504-26-045, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-045, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-050 ((Interim)) Supportive measures. (1) While a student conduct matter is pending, the university may take a number of ((interim actions or)) supportive measures ((in order)) on an interim basis to ensure the preservation of the educational experience and the overall university environment of the parties.

(a) These actions may include, but are not limited to:

((+a)) (i) A no-contact ((order)) directive assigned to any party;

((+b)) (ii) University housing room change for one or more involved parties; and/or

((+e)) (iii) Changes in academic schedules or assignments for ((any party)) one or more involved parties.

((+2)) As stated in the university's housing and dining policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassessments are determined to be necessary by the university.

((+3))) (b) These actions for registered or recognized student organizations may include, but are not limited to:

(i) Loss of recognition;

(ii) Restriction of specified operational activities.

(2) University departments ((taking interim or)) implementing supportive measures must coordinate with ((the center for community standards)) CCS, which advises the parties of the ((interim)) supportive measures and the process for challenging them. For matters involving the university's executive policy 15, the departments must also consult with CCR regarding ((interim or)) supportive measures.

((Interim and)) Supportive measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-050, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-050, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-100 Presiding officers. Full adjudicative proceedings are conducted by the conduct board and are presided over by an individual who is licensed to practice law in the state of Washington and has judicial training. The presiding officer's role is to ensure a fair and impartial process and is limited to making procedural and evidentiary rulings and handling logistical and other matters related to facilitating the proceedings to ensure compliance with legal requirements. The presiding officer must transmit a full and complete record of the proceedings to ((the center for community standards)) CCS and the conduct board, including such comments upon demeanor of witnesses as the presiding officer deems relevant, in accordance with RCW 34.05.461. The presiding officer does not vote and is not considered for purposes of creating a quorum of the conduct board.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-100, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-100, filed 6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-100, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-100, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-100, filed 1/30/12, effective 3/1/12; WSR 06-23-159, § 504-26-100, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-105 Recruitment, appointment, and term of conduct and appeals board members. A committee comprised of students, staff, ((and)) and/or faculty members and convened by the ((vice president for student affairs)) dean of students selects a pool of members of the university community to serve as conduct board members ((, as well as a separate pool for)) and appeals board members. ((Each pool must include representatives from all WSU campuses.)) Pool members are approved by the university president and must be in good standing with the university. Pool members serve a maximum term of four calendar years but may apply to serve another four-year term after a break of two years. Terms of pool members are staggered. ((Boards are convened by the vice president for student affairs or designee. The center for community standards)) CCS is not involved in the recruitment or application processes for board members.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-105, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 20-07-075, filed 3/16/20, effective 4/16/20)

WAC 504-26-110 Composition of conduct board. A conduct board must consist of at least three members. A quorum of three is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining

whether there is a quorum. A minimum of one conduct board member hearing a matter must be ((an enrolled WSU)) a student ((undergraduate, graduate, or professional) and may be full-time or part-time)). The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

[Statutory Authority: RCW 28B.30.150. WSR 20-07-075, § 504-26-110, filed 3/16/20, effective 4/16/20; WSR 18-23-083, § 504-26-110, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-115 Composition of appeals board. ((The)) An appeals board must consist of at least three members. A quorum of three is needed to review a matter. A ((majority of)) minimum of one appeals board member((s)) hearing a matter must be ((enrolled WSU students (undergraduate, graduate, or professional) and may be full-time or part-time)) a student. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. No appeals board member may serve on a case if the member previously served on a board ((on)) in a case involving the same complainant or respondent. ((The vice president for student affairs or designee is responsible for designating one of the three appeals board members as chair.)) One member of the appeals board serves as the chair of the board. The chair is responsible for ensuring a fair and impartial process and is a voting member of the appeals board.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-115, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-120 Training. (1) Board members ((and presiding officers)). Conduct board members((r)) and appeals board members((, and presiding officers)) must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) ((Cultural competency)) Diversity, equity, inclusion, and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) ((Identifying bias against individuals and against groups;)) Fair and equitable decision making, including:
- (d) Conflict of interest;
- (e)) Fair and equitable decision making, including:
- (i) Due process;
- (ii) Standards of proof;
- (iii) Relevant and admissible evidence;

- (iv) Conflict of interest; and
 - (v) Identifying bias;
 - (d) Sexual assault and gender-based violence;
 - ((f)) (e) Alcohol and drug prevention;
 - ((g)) Due process and burden of proof in student conduct matters;
 - ((h)) (f) Sanctioning principles and guidelines; and
 - ((i)) (g) Title IX regulatory definitions, jurisdiction, and grievance processes ((~~;~~ and
 - ((j)) Relevant and admissible evidence)).
- (2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:
- (a) Alternative dispute resolution;
 - (b) Restorative justice; and
 - (c) All training required of board members (see subsection (1) of this section).
- (3) Presiding officers. Presiding officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:
- (a) Diversity, equity, inclusion, and implicit bias;
 - (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
 - (c) Title IX regulatory definitions, jurisdiction, and grievance processes.
- (4) Renewal of training. Training must be renewed on ((an annual)) a biennial basis.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-120, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-120, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-125 Recusal. (1) Notification of names of conduct officers and board members. All parties must be notified of the names of conduct officers, conduct board members, and/or appeals board members assigned to their case no later than ((ten)) seven calendar days prior to the hearing or appeals board meeting date.

(2) Requesting recusal of conduct officers and board members. A party requesting recusal of a conduct officer or conduct/appeals board member must demonstrate good cause. ((The request must be made in writing no later than five calendar days prior to the date of the conduct hearing or appeals board meeting.)) For conduct board members, the presiding officer is responsible for granting or denying requests. For conduct officers and appeals board members, the ((vice president for student affairs)) dean of students or designee is responsible for granting or denying requests.

(3) Presiding officer. Requests for recusal of the presiding officer are governed by the model rules of procedure, WAC 10-08-050(2).

((4)) Self-recusal in the event of conflict of interest. Conduct officers and board members must be trained in conflict of interest. For any matter in which they are participating, if they identify a potential conflict of interest, appeals board members and conduct officers must promptly notify and consult with the vice president for stu-

dent affairs or designee, while conduct board members must promptly notify and consult with the presiding officer. Conduct officers and board members must recuse themselves if, after consultation, an actual conflict is determined to exist. If a potential conflict is identified but is determined by the vice president or designee or presiding officer, as applicable, to be insufficient to justify removal of the person, the parties must be notified of the potential conflict and reasons for determining that it does not pose an actual conflict. For purposes of this subsection, a conflict of interest is defined as a personal interest, financial, familial, or otherwise, that might impair, or reasonably appear to an objective, outside observer to impair, a person's independent unbiased judgment in the discharge of their official responsibilities.)

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-125, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or recognized or registered student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in WAC ((504-26-405)) 504-26-425.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-201, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-201, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-201, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-201, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-201, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty ((include, but are not limited to, those listed in this chapter)) are defined as:

- (1) Academic integrity violations ((including, but not limited to, cheating as defined in WAC 504-26-010)).
- (2) Knowingly furnishing false information, knowingly omitting relevant information, or knowingly misrepresenting information to any person, including university officials, faculty members, or administrators. It is not a violation of this section to refuse to give self-incriminating evidence to a university official, faculty member, or administrator. (See WAC 504-26-045.)
- (3) Forgery, alteration, or misuse of any university document or record, or instrument of identification whether issued by the university or other state or federal agency.

- (4) Fraud ((or misrepresentation)).

[Statutory Authority: RCW 28B.30.150. WSR 15-01-080, § 504-26-202, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-202, filed 2/6/08, effective 3/8/08; WSR 07-11-030, § 504-26-202, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-202, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-203 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent ((or)) and protest, but this expression may not interfere with the rights of others or substantially disrupt or materially interfere with the university's activities. Time, place, and manner restrictions apply. (See chapter 504-33 WAC.) Behavior prohibited ((behavior includes)) by this section is:

(1) Substantial disruption or ((obstruction of)) material interference with the university's activities by any means including use of telephone, computer, or some other medium. University activities include, but are not limited to, teaching, research, administration, or disciplinary proceedings ((, other university activities, including its public service functions on or off campus, or of other authorized non-university activities when the conduct occurs on university premises or is directed toward any member of the university community by any means including use of telephone, computer, or some other medium)). University activities may also include activities of other entities that are authorized to be conducted on the university premises.

(2) Obstruction of the free flow of persons, including pedestrian or vehicular traffic on university premises or at university-sponsored or supervised functions.

(3) Conduct that substantially prevents any member of the university community from completing their duties.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-203, filed 11/19/18, effective 12/20/18; WSR 07-11-030, § 504-26-203, filed 5/8/07, effective 6/8/07; WSR 06-23-159, § 504-26-203, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-204 ((Abuse of others or disruption or interference with the university community.)) Physical harm or direct threat. ((Abuse of others or disruption or interference with the university community is defined as:

((1))) Physical ((abuse)) harm, direct threats, ((intimidation,)) and/or other conduct that ((threatens, endangers, harms, or)) undermines the ((health,)) safety((, or welfare)) of the university community or any person.

((2)) Conduct that disrupts the university community or prevents any member of the university community from completing their duties.

(3) Conduct that interferes with or disrupts the university's mission, operations, or activities.))

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-204, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-204, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-204, filed 12/15/14, effective 1/15/15; WSR 14-11-025, § 504-26-204, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-204, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-205 Theft or damage to property. Theft of, and/or the intentional or reckless damage to, the property of another.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-205, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-206 Hazing. (1) ((No student or recognized or registered student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

((a))) Hazing includes any ((activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical)) act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a recognized or registered student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or psychological or emotional harm, regardless of the person's willingness to participate.

((b))) (2) Hazing activities may include, but are not limited to((, the following)):

((Abuse)) (a) Use of alcohol during ((new member)) activities targeted towards new members;

(b) Striking another person whether by use of any object or one's body;

(c) Creation of excessive fatigue;

(d) Physical and/or psychological shock;

(e) Morally degrading or humiliating games or activities ((that create a risk of bodily, emotional, or mental harm.))

((e));

(f) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance regardless of the person's willingness to participate;

(g) Unreasonable or unnatural physical activity.

(3) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intra-mural or club sports and NCAA athletics, or other similar contests or

competitions ((, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited)).

((2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a recognized or registered student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be assigned, forfeits any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any recognized or registered student organization that knowingly permits hazing by its members or others subject to its direction or control must be deprived of any official recognition or approval granted by the university.))

(4) Hazing is prohibited both on and off campus.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-206, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-206, filed 11/19/18, effective 12/20/18; WSR 06-23-159, § 504-26-206, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university website or in hard copy including, but not limited to, ((Washington State)) the university's alcohol and drug policy, executive policy 15, and housing and residence life policy.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-209, filed 3/15/21, effective 4/15/21; WSR 15-01-080, § 504-26-209, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-209, filed 5/11/11, effective 6/11/11; WSR 06-23-159, § 504-26-209, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-211 Drugs and drug paraphernalia. Use, possession, manufacture, or distribution of ((marijuana)) cannabis, narcotics, or other controlled substances, ((and)) or drug paraphernalia except as permitted by federal, state, and local law.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-211, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-212 Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages to any person under 21 years old or by any person under 21 years old (except as expressly permitted by university regulations, and federal, state, and local laws), or public intoxication (. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal) at any age.

[Statutory Authority: RCW 28B.30.150. WSR 15-11-041, § 504-26-212, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-212, filed 12/15/14, effective 1/15/15; WSR 06-23-159, § 504-26-212, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 20-07-075, filed 3/16/20, effective 4/16/20)

WAC 504-26-213 Firearms and dangerous weapons. No student may ((carry,)) possess~~((,))~~ or use any firearm (including airsoft guns), explosive (including fireworks), dangerous chemicals (excluding pepper spray), or ((any)) other dangerous weapons or instrumentalities (including tasers) on university premises ((or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing)). This prohibition does not apply to possession of such items for authorized university purposes; possession of such items by authorized law enforcement officers; or individuals who have obtained prior written approval from the university chief of police, president, or designee.

[Statutory Authority: RCW 28B.30.150. WSR 20-07-075, § 504-26-213, filed 3/16/20, effective 4/16/20; WSR 18-23-083, § 504-26-213, filed 11/19/18, effective 12/20/18; WSR 08-05-001, § 504-26-213, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-213, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-217 Unauthorized use of electronic or other devices. ((Unauthorized use of electronic or other devices:)) Making an audio, digital, or video record of any person ((while on university premises)) without their prior knowledge, or without their effective consent when such a recording is of a private conversation or of images taken of a person(s) at a time and place where they would reasonably expect privacy and where such images are likely to cause injury or

distress. ((This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view, such as Martin Stadium or the Glenn Terrell Mall.))

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-217, filed 3/15/21, effective 4/15/21; WSR 06-23-159, § 504-26-217, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

(1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Unauthorized use of computer hardware.

((4) Unauthorized use of another individual's identification ((and/or)) password, or multifactor authentication credentials.)

((5) ((Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.))

((6) Use of computing facilities and resources to send obscene, harassing, or threatening messages.)

((7) Use of computing facilities and resources to interfere with normal operation of the university computing system.)

((8))) Use of computing facilities and resources in violation of any law, including copyright laws.

((9))) (6) Any violation of the university computer use policy found in the university's executive policy 4 (electronic communication policy).

[Statutory Authority: RCW 28B.30.150. WSR 15-01-080, § 504-26-218, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-218, filed 1/30/12, effective 3/1/12; WSR 08-05-001, § 504-26-218, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-218, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system is defined as:

(1) ((Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.))

((2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.))

((3) Disruption or interference with the orderly conduct of a university conduct board proceeding.))

((4))) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.

((5)) (2) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

((6)) (3) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.

((7)) (4) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board, any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.

((8)) (5) Failure to comply with or failure to complete any ~~(term or condition of any disciplinary)~~ sanction(s) assigned under the standards of conduct.

((9)) ~~Influencing or attempting to influence another person to commit an abuse of the university conduct system.~~

(10)) (6) Violation of probation or any probationary conditions.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-219, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-219, filed 11/19/18, effective 12/20/18; WSR 15-01-080, § 504-26-219, filed 12/15/14, effective 1/15/15; WSR 08-05-001, § 504-26-219, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-219, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-220 Discriminatory harassment. (1) Unwelcome, intentional conduct on the basis of race; sex and/or gender; sexual orientation; gender identity or expression; religion; age; color; creed; national or ethnic origin; marital status; genetic information; status as an honorably discharged veteran or member of the military; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); or immigration or citizenship status, except as authorized by federal or state law, regulation, or government practice, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

(a) Interferes with, or has the potential to interfere with, an individual's ability to participate in ~~((WSU))~~ university employment, education, programs, or activities;

(b) Adversely alters the condition of an individual's ~~((WSU))~~ university employment, education, or participation status;

(c) Creates an objectively abusive employment, program, or educational environment; or

(d) Results in a material or substantial disruption of ~~((WSU's))~~ the university's operations or the rights of students, staff, faculty, visitors, or program participants.

(2) In determining if conduct is harassing, the totality of the circumstances are assessed including, but not limited to, the following factors:

(a) Severity;

(b) Frequency of the discrimination;

(c) Status of the reporting and responding parties and their relationship to each other;

(d) Physicality, threats, or endangerment; and

(e) Whether or not the conduct could be reasonably considered protected speech or serving some other lawful purpose.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-220, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-220, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-220, filed 5/12/14, effective 6/12/14; WSR 06-23-159, § 504-26-220, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-224 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property. Reckless endangerment includes, but is not limited to, operating a motor vehicle while intoxicated.

[Statutory Authority: RCW 28B.30.150. WSR 06-23-159, § 504-26-224, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-227 Sexual harassment. Unwelcome, intentional conduct, on the basis of sex and/or gender, which is so severe or pervasive, and objectively offensive, that it substantially and unreasonably:

- (1) Interferes with, or has the potential to interfere with, an individual's ability to participate in ((WSU)) university employment, education, programs, or activities;
- (2) Adversely alters the condition of an individual's ((WSU)) university employment, education, or participation status;
- (3) Creates an objectively abusive employment, program, or educational environment; or
- (4) Results in a material or substantial disruption of ((WSU's)) the university's operations or the rights of students, staff, faculty, visitors, or program participants.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-227, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-227, filed 11/19/18, effective 12/20/18; WSR 14-11-025, § 504-26-227, filed 5/12/14, effective 6/12/14.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-401 Initiating conduct proceedings. (1) Complaints. Any member of the university community may submit a complaint that a student or recognized or registered student organization violated the standards of conduct. In matters that would constitute a violation of executive policy 15, the complaint must be initiated through CCR. In

addition, ((the university)) CCS may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to ((refer the matter for hearing)) initiate the community standards process. Except as provided below, after reviewing the initial information, if the conduct officer determines that ((further conduct proceedings are)) additional action from CCS is not warranted, the conduct officer dismisses the matter. If the conduct officer decides not to initiate a conduct proceeding ((when requested by a complainant)), the conduct officer must notify the ((complainant)) reporting party in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known. A conduct officer cannot dismiss a matter received from CCR where CCR completed a formal investigation implicating Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, regardless of the investigation's outcome. In such cases, the conduct officer must refer the matter to a conduct board hearing, which must be held within ((sixty)) 60 days of the date the CCR formal investigation report was received, unless good cause exists to extend the date of the hearing or the matter is resolved through agreement or alternative dispute resolution.

(3) ((Notice of informational meeting. After reviewing initial information regarding a possible student conduct violation, if the student conduct officer decides conduct proceedings are warranted, the student conduct officer sends the respondent, or parties as appropriate, written notice of an informational meeting. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the meeting. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 (Interpretation Policies, procedures, and guidelines) must be provided. Any request to change or extend the time or date of the informational meeting should be addressed to the conduct officer.

(4) Purpose of informational meeting. The purpose of the informational meeting is to provide the respondent with information on the conduct process and their rights and responsibilities, and to determine next steps, if any, in resolving the matter. During the informational meeting, the respondent may provide names of witnesses to the conduct officer to potentially contact. In cases involving Title IX, an informational meeting is also offered to a complainant.

(5)) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution ((. In cases where agreement is not reached directly, before referring the matter to a hearing, the conduct officer must consider, and make a written determination, whether alternative dispute resolution is appropriate to resolve the matter. Alternative dispute resolution must not be used in matters involving sexual misconduct or sexual harassment)) including, but not limited to, shuttle diplomacy or mediation. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.

((6)) (4) Referral for adjudication. Except as provided in subsection (2) of this section, ((after the informational meeting,)) if ((the conduct officer)) CCS determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing (brief adjudication) in accordance with WAC 504-26-402, or conduct board hearing (full adjudication) in accordance with WAC 504-26-403. In determining which process is appropriate, ((the conduct officer)) CCS considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with ((the center for community standards)) CCS, and the range of possible sanctions that could be assigned. A student may request that a conduct board hear the case, but the final decision regarding whether to refer the matter to the conduct board for hearing is made by ((the conduct officer)) CCS and is not subject to appeal.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-401, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-401, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-401, filed 6/15/17, effective 7/16/17; WSR 15-11-041, § 504-26-401, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-401, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-401, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-401, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-401, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-402 Conduct officer hearings (brief adjudications).

(1) The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than ((ten)) 10 instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.

(2) Notice of hearing. The conduct officer must provide the parties with written notice no later than ((ten)) seven calendar days prior to the conduct officer hearing. The notice must ((, at a minimum, briefly describe)) include:

(a) A brief description of the factual allegations or issues involved((,));

(b) The specific standard of conduct provision(s) the respondent is alleged to have violated((, the range of possible sanctions for such violations, and));

(c) The time, date, and place of the hearing((, In addition,)) or process by which a respondent may schedule the hearing;

(d) Information regarding what to expect during the student conduct process and student rights ((, as required by WAC 504-26-504 must be provided. The notice must also include:

(a) A jurisdiction statement if the alleged behavior occurred off campus and information regarding the right to challenge jurisdiction in accordance with WAC 504-26-015;

(b) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125; and

(c)) including, but not limited to:

(i) A statement that the parties have the right to have an advisor present at the hearing;

(ii) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045;

(iii) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125;

(e) Available resources, including how to access an information session and legal resources in the community;

(f) A statement that any request to ((extend)) modify the time or date of the conduct officer ((conference/hearing)) hearing should be addressed to ((the conduct officer)) CCS;

(g) A statement that indicates that respondents are presumed "not responsible" for the pending allegations;

(h) A statement that violations are determined by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred.

(3) Hearing and possible outcomes. Conduct officer hearings are brief adjudications conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows the conduct officer to review available information, hear the parties' view of the matter, render a decision regarding responsibility, and assign sanctions, as appropriate.

(a) ((Before the hearing begins, the conduct officer must inform the respondent that:

(i) All respondents are presumed "not responsible" for pending charges;

(ii) The university must prove all violations by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred; and

(iii) The parties have the right to have an advisor present at the hearing.

((b))) Upon conclusion of the hearing, the conduct officer may take any of the following actions:

(i) ((Terminate the proceeding and enter a finding that)) Find the respondent ((is not)) responsible for any or all of the alleged ((conduct)) violations and assign sanctions as provided in WAC 504-26-425 within the limitations described in subsection (1) of this section;

(ii) Find the respondent not responsible for any or all of the alleged violations;

(iii) Dismiss the matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information becomes known ((,));

((iii) Find the respondent responsible for any violations and impose sanctions within the limitations described in subsection (1) of this section)); or

(iv) Refer the matter to the conduct board.

(4) Notice of decision and right to appeal. The conduct officer notifies the parties in writing of the decision within ((ten)) 10 cal-

endar days of the conduct officer hearing. This is the initial order of the university and ((includes information regarding the parties' right to appeal under WAC 504-26-420)) must include:

(a) Description of the allegations that initiated the community standards process;

(b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;

(c) Appropriately numbered findings of fact and conclusions;

(d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);

(e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(f) Notice that the initial order becomes final unless an appeal is filed within 20 calendar days of the date the initial order is sent to the parties.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-402, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-402, filed 11/19/18, effective 12/20/18; WSR 17-13-049, § 504-26-402, filed 6/15/17, effective 7/16/17; WSR 16-08-014, § 504-26-402, filed 3/28/16, effective 4/28/16; WSR 15-01-080, § 504-26-402, filed 12/15/14, effective 1/15/15; WSR 12-04-049, § 504-26-402, filed 1/30/12, effective 3/1/12; WSR 11-11-031, § 504-26-402, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-402, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-402, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-403 Conduct board hearings (full adjudications). (1)

Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than ((ten)) 10 instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board ((in)) at the discretion of ((the conduct officer)) CCS.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC ((504-26-504)) 504-26-401 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than ((ten)) seven calendar days after the parties have been sent notice of the hearing.

In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the presiding officer. A request for extension of time is granted only upon a showing of good cause.

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Cross-examination. As required by RCW 34.05.449, cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues. Cross-examination is conducted orally through the party's advisor or representative. If a party does not have an advisor or representative, an advisor is provided by the university free of charge to conduct cross-examination on that party's behalf. Advisors and representatives are required to engage in cross-examination questioning in a respectful manner. In no circumstance may the complainant or respondent be permitted to cross-examine each other directly. Before any witness or party may answer a cross-examination question, the presiding officer must first determine whether the question is relevant. The presiding officer must instruct parties or witnesses not to answer cross-examination questions that are irrelevant, immaterial, or unduly repetitious.

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter ((, except that any sanction of expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization requires a supermajority consisting of no more than one "no" vote)).

(9) Notice of decision and right to appeal. Within ((ten)) 10 calendar days of the completion of the hearing, the conduct board must issue a decision simultaneously to all parties, which is the initial order of the university and must contain the following:

- (a) Description of the allegations that initiated the community standards process;
- (b) Description of procedural steps taken from the receipt of the formal complaint up to and including the university conduct board hearing;
- (c) Appropriately numbered findings of fact and conclusions;
- (d) The sanction(s) and/or remedy(ies) to be assigned, if any, and the rationale for the sanction(s) and/or remedy(ies);
- (e) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and
- (f) Notice that the initial order becomes final unless an appeal is filed within ((twenty)) 20 calendar days of the date the initial order is sent to the parties.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-403, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-403, filed

11/19/18, effective 12/20/18; WSR 16-08-014, § 504-26-403, filed 3/28/16, effective 4/28/16; WSR 15-11-041, § 504-26-403, filed 5/14/15, effective 6/14/15; WSR 15-01-080, § 504-26-403, filed 12/15/14, effective 1/15/15; WSR 11-11-031, § 504-26-403, filed 5/11/11, effective 6/11/11; WSR 08-05-001, § 504-26-403, filed 2/6/08, effective 3/8/08; WSR 06-23-159, § 504-26-403, filed 11/22/06, effective 12/23/06.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or student conduct proceeding relating to alleged standards of conduct violations. An emergency suspension may be assigned at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension.

(a) For matters which would not constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in situations when the dean of students or ((campus)) a vice chancellor for student affairs (in consultation with ((the center for community standards)) CCS), or their designee, has cause to believe that the student:

(i) Has violated any provision of the standards of conduct; and
(ii) Presents an immediate danger to the health, safety, or welfare of any part of the university community or the public at large. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

(b) For matters which would constitute Title IX sexual harassment within the university's Title IX jurisdiction, as defined by university executive policy 15, emergency suspension may be assigned only in a situation where the dean of students or ((campus)) a vice chancellor for student affairs (in consultation with ((the center for community standards)) CCS), or their designee, has engaged in an individualized safety and risk analysis, and determines that removal is justified because the student:

(i) Has violated any provision of the standards of conduct; and
(ii) Is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX sexual harassment.

(3) Procedure. The dean of students or ((campus)) a vice chancellor for student affairs, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), the policy reasons for the emergency suspension, and the process to challenge the decision. The emergency suspension does not replace the regular hearing process, which must proceed to a conduct officer hearing or conduct board hear-

ing, as applicable, as quickly as feasible. Once a final order is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order is assigned.

(4) Challenge of the decision. The student can challenge the emergency suspension decision within ((ten)) 10 calendar days of the date of notice. Challenges are reviewed by the vice president ((eff)) for student affairs or their designee, provided the designee is not the same person who made the original emergency suspension decision. The vice president ((eff)) for student affairs or designee has ((ten)) 10 calendar days to respond to the review and can uphold, reverse, or modify the emergency suspension. The submission of a challenge does not stay the emergency suspension decision.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-409, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-409, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-415 Procedure for academic integrity violations. (1)
Initial hearing.

(a) When a responsible instructor ((finds)) believes that ((a violation of)) an academic integrity violation has occurred, the instructor must assemble the evidence and, upon reasonable notice to the ((student)) respondent of the date, time, and nature of the allegations, make reasonable attempts to meet with the ((student)) respondent suspected of ((violating)) committing an academic integrity ((policies)) violation.

(b) If the ((student)) respondent admits ((violating)) that they committed an academic integrity ((policies)) violation, the instructor assigns an outcome in keeping with published course policies and notifies ((the center for community standards)) CCS in writing, including the allegations, the ((student's)) respondent's admission, and the sanctions assigned.

((b)) (c) If the instructor is unable to meet with the ((student)) respondent or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor must make a determination as to whether the ((student)) respondent did or did not ((violate the)) commit an academic integrity ((policies)) violation based on a preponderance of the evidence standard, meaning that it is more likely than not that the violation occurred. If the instructor finds that the ((student)) respondent was in violation, the instructor must provide the ((student)) respondent and ((the center for community standards)) CCS with a written determination, the evidence relied upon, and the sanctions assigned.

((e)) (d) The ((student)) respondent has ((twenty-one)) 21 calendar days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) assigned to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a ((student)) respondent who has been found by their instructor to have ((violated the)) committed an academic integrity ((policies)) violation, the academic integrity hearing board must make a separate and independent determina-

tion of whether or not the ((student)) respondent is responsible for ((violating the)) committing an academic integrity ((policies)) violation and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board must consist of a minimum of three members. A quorum of three is needed to review a matter. A minimum of one academic integrity hearing board member must be an enrolled student. The remaining members may be students, or full-time or part-time faculty of any rank or classification. No academic integrity hearing board member may serve on a case if the member previously served on a board in a case involving the same student.

(c) The academic integrity hearing board is empowered to provide an appropriate remedy for a ((student)) respondent including arranging a withdrawal from the course, having the ((student's)) respondent's work evaluated, or changing a grade where it finds that:

(i) The ((student)) respondent is not responsible for violating academic integrity policies; or

(ii) The outcome assigned by the instructor violates the instructor's published policies.

((e)) (d) Academic integrity hearing board proceedings.

(i) Any ((student)) respondent appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:

(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;

(B) The approximate time and place of the alleged act that forms the factual basis for the violation;

(C) The time, date, and place of the hearing;

(D) A list of the witnesses who may be called to testify, to the extent known; and

(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the ((student)) respondent must have the right to inspect the documentation.

(ii) Time for hearings.

(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the ((student)) respondent has been sent notice of the hearing.

(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to ((the center for community standards)) CCS. A request for extension of time is granted only upon a showing of good cause.

(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by ((e)) (d)

(iv) of this subsection:

(A) Academic integrity hearing board hearings are conducted in private.

(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.

(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.

(D) In hearings involving graduate ((students)) respondents, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weekdays before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may ((suggest)) submit written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the academic integrity hearing board chair, who has the discretion to determine admissibility of information.

(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.

(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.

(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is more likely than not responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(I) The respondent is notified of the academic integrity hearing board's decision within ((twenty)) 20 calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.

(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.

(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

(vi) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by ((university or college)) academic integrity hearing board((s)).

(3) If the reported violation is the respondent's first offense, ((the center for community standards)) CCS ordinarily requires the respondent to attend a workshop separate from, and in addition to, any academic outcomes assigned by the instructor. ((A hold is placed on

~~the respondent's record preventing registration or graduation until completion of the workshop.)~~

(4) If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, ((with a recommendation that the respondent be dismissed)) to determine appropriate sanctions, which may include expulsion from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred ((for a full adjudicative hearing,)) to the conduct board with a recommendation for ((dismissal)) expulsion from the university even if it is the respondent's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings must be reported to the responsible instructor and the chair or dean.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-415, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-415, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become final on the ((twenty-first)) 21st calendar day after the date the decision is sent to the parties, unless an appeal is submitted within ((twenty)) 20 calendar days of the date the decision is sent to the parties.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order assigning sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, ((the appeals board)) CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond((, and)) within 10 calendar days. The appeals board then conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct ((officer)) hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless ((significant prejudice results)) procedural error affected the outcome of the matter;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) assigned were appropriate for the violation of the standards of conduct that the respondent was found to have committed; ((er))

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing;

(v) To consider whether or not the university had jurisdiction per WAC 504-26-015 to address the situation through the community standards process. In cases implicating the university's executive policy 15, the appeals board must consult with the university's Title IX coordinator; or

(vi) To consider whether the Title IX coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, ((the appeals board)) CCS provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond within 10 calendar days.

((a)) The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

((b)) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.)

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions assigned by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent si-

multaneously to the parties within ((twenty)) 20 calendar days of receipt of the appeal. For appeals of conduct board decisions, the appeals board's decision must be sent simultaneously to the parties within ((thirty)) 30 calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to ((ninety)) 90 calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

(7) Reconsideration of final orders. Within ((ten)) 10 calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or ((twenty-one)) 21 calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within ((twenty-one)) 21 calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within ((ten)) 10 calendar days of the date the order was served.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-420, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-420, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the ((center for community standards)) university website. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) assigned for a particular violation.

(2) Factors for sanctioning must include, but not be limited to, the following:

(a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;

(b) Malicious intent. If a respondent is found to have intentionally selected a victim based upon the respondent's perception of the victim's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct; ((and))

(c) Impact on victim and/or university community;

(d) Applicable local, state, or federal laws that define sanc-
tioning.

((+2)) (3) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

((+3)) (4) Types of sanctions. The following sanctions may be assigned to any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be assigned for any single violation:

(a) Warning. A notice in writing to the respondent that the respondent is violating or has violated ((institutional regulations)) the standards of conduct.

(b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the ((student or recognized or registered student organization)) respondent that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be assigned if the ((student or recognized or registered student organization)) respondent is found to have violated the standards of conduct or any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A ((student)) respondent on probation is not eligible to run for or hold an office in any recognized or registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. ((The university may require the respondent)) Requirement to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. Assignment of service hours (not to exceed ((eighty)) 80 hours per ((student)) respondent or per member of a recognized or registered student organization).

(g) University housing suspension. Separation of the ((student)) respondent from a residence hall or halls for a definite period of time, after which the ((student)) respondent may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the ((student)) respondent from a residence hall or halls.

(i) University suspension. Separation of the ((student)) respondent from the university for a definite period of time((, after which the student is eligible)). The respondent may be required to request readmission after completing a suspension per other university policy. ((Conditions for readmission may be specified.))

(j) University expulsion. Permanent separation of the ((student)) respondent from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree or admission, or for other serious violations committed by a ((student)) respondent before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions assigned, if any.

(m) Trespass. A ((student)) respondent may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A recognized or registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. ((A fraternity or sorority may be prohibited from housing first year students.)) Loss of recognition is defined as withholding university services, privileges, or administrative approval from a recognized or registered student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student involvement office organizational activities, and their liaison relationship with the center for fraternity and sorority life ((advising)).

(o) Hold on transcript and/or registration. A hold restricts release of a ((student's)) respondent's transcript or access to registration until satisfactory completion of conditions or sanctions assigned by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact ((order)) directive. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be assigned. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a ((student)) respondent who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902. Any recognized or registered student organization that is found responsible for hazing must lose recognition for a specified period of time.

(s) Remedies. Sanctions designed to restore or preserve a ((victim's)) complainant's equal access to the university's educational programs or activities.

((4) Academic integrity violations. No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.))

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-425, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-425, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The ((vice president for student affairs)) dean of students or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the ((center for community standards)) university website ((and in the university's student handbook)). A link to the ((student handbook or center for community standards)) website must be provided to parties ((prior to any informational meeting or student conduct hearing and must provide the following information:

- (a) Rights in the student conduct process;
- (b) A clear explanation of what to expect during the process;
- (c) Information regarding legal resources available in the community;
- (d) A statement that respondents are presumed "not responsible"; and
- (e) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045)) during their initial contact from CCS.

(2) Definitions from these standards are incorporated into ((Washington State)) the university's executive policy 15.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-504, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-504, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-510 Good Samaritan policy. ((A conduct officer)) CCS may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student or recognized or registered student organization who, while in the course of helping another person seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk. In addition, ((a conduct officer)) CCS may elect not to initiate a conduct proceeding against a complainant who admits to the possession or use of alcohol or drugs in connection with a report under this policy.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-510, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-515 Periodic review and assessment. At the end of each academic year, ((the center for community standards)) CCS provides a report to the ((vice president for student affairs)) dean of students which must include, at a minimum, a numerical breakdown of the types of matters handled and the sanctions assigned. The ((vice president for student affairs)) dean of students must make the report publicly available, provided all personally identifiable or readily ascertainable student information is removed.

The standards of conduct and the student conduct system as a whole are reviewed every three years under the direction of the ((vice president for student affairs)) dean of students or designee. The student government council is asked to provide recommendations and input on proposed changes. After completion of any adjudication or other resolution of a student conduct matter, ((the center for community standards)) CCS must send a survey to all parties requesting feedback on the process. Feedback results must be reviewed, at a minimum, every three years in connection with the periodic review and assessment.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-515, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-515, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-520 Conduct hold on student record. When a student leaves the university or completes course work required for a degree after an incident occurs that could result in violations of the standards of conduct, ((the center for community standards)) CCS may place a conduct hold on the student's record. A conduct hold may also be placed on the student's account if the student has failed to adequately complete sanctions by the proscribed timeline. A conduct hold may restrict the student from adding or dropping classes, requesting an official transcript, or receiving a degree from the university until the hold is removed. ((The center for community standards)) CCS must advise the student of the hold and the process for challenging the hold. A conduct hold under these circumstances is not a sanction and does not imply or assume responsibility for a violation of the standards of conduct.

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-520, filed 11/19/18, effective 12/20/18.]

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-530 Recordkeeping and confidentiality. (1) Removal of conduct record. A student may request removal ((from their record)) of a single disciplinary violation ((relating to the possession or use of alcohol and/or marijuana, and/or other violation of the universi-

~~ty's policies relating to alcohol and drugs)) from their record.~~

Granting such a request is discretionary, and the student must make such a request in accordance with university policies and procedures.

(2) Conduct records are maintained in accordance with the university's records retention schedule.

(3) The conduct record is confidential and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 504-21 WAC, University policy on student education records. Situations where CCS may release records include, but are not limited to, releases:

(a) To another educational institution, upon request, where the student seeks or intends to enroll;

(b) To a parent or legal guardian, if a student under the age of 21 is found responsible for a drug or alcohol violation;

(c) To comply with legally served search warrants and subpoenas;

(d) To other university employees, if there is an educational need for the employee to know the information;

(e) To inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA;

(f) To inform the complainant of the outcome of any conduct proceeding alleging dating violence, domestic violence, sexual assault, or stalking as defined by the Clery Act (34 C.F.R. 668.46(k)(2)(v)(A)).

(4) A student may request a copy of their own conduct record at their own reasonable expense by making a written request to ~~((the center for community standards)) CCS~~.

(5) Personally identifiable student information is redacted to protect other students' privacy, except as otherwise required by law.

(6) A student may authorize release of their own conduct record to a third party in compliance with FERPA by making a written request to ~~((the center for community standards)) CCS~~.

~~((7) The university may inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA.~~

~~((8) The university informs the complainant of the outcome of any conduct proceeding alleging sexual misconduct. (34 C.F.R. 668.46(b)(11)(vi)(B).)~~

~~((9) The university may not communicate a student's conduct record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:~~

~~((a) The student's parents or legal guardians may review these conduct records if the student is a dependent for tax purposes as defined by FERPA.~~

~~((b) The university may release conduct records to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA.))~~

[Statutory Authority: RCW 28B.30.150. WSR 18-23-083, § 504-26-530, filed 11/19/18, effective 12/20/18.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 504-26-214	Disruptive activity.
WAC 504-26-215	Obstruction.
WAC 504-26-216	Disorderly conduct.
WAC 504-26-226	Violation of a disciplinary sanction.

WSR 22-18-095

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed September 7, 2022, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-112.

Title of Rule and Other Identifying Information: Chapter 504-28 WAC, Policies and regulations applying to all student organizations.

Hearing Location(s): On October 12, 2022, at 4:00 p.m., Zoom meeting. Join from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/91346750619?pwd=WU5hYjBSQmpNRlJEZVZzNHlZU0xzUT09>, Meeting ID 913 4675 0619, Passcode 160021; or join by telephone (long distance) +1 253 215 8782 or 91346750619# US (one tap mobile call), (enter the meeting ID and passcode when prompted). No in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: November 18, 2022.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 12, 2022.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington State University (WSU) is updating the policies and regulations applying to all student organizations, specifically WAC 504-28-010 Student organizations.

Reasons Supporting Proposal: WSU is updating the policies and regulations regarding registration of, membership in, and requirements for student organizations.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Brian Shufield, Executive Director, Student Engagement Services for Student Affairs, Compton Union Building 320, Pullman, WA 99164-7204, 509-335-3138; Implementation and Enforcement: Ellen Taylor, Vice President for Student Affairs, Lighty Services 360, Pullman, WA 99164-1050, 509-335-4531.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSU does not consider these rules to be significant legislative rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025.

Explanation of exemptions: The amendments to WSU student organization rules only apply to students at WSU, and therefore do not affect business or commerce in any way.

September 7, 2022
Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

OTS-4061.1

AMENDATORY SECTION (Amending WSR 09-11-070, filed 5/14/09, effective 6/14/09)

WAC 504-28-010 Student organizations. (1) Registration.

(a) The university registers a wide variety of student organizations to facilitate the diverse interests of the student body. Attendant to registration, organizations are granted certain privileges and assume certain responsibilities as set forth in these rules. Registration in no way implies that the university plans, organizes, or sanctions any particular activity or policy of a student organization. The term registration as it applies to student organizations in this chapter has the same meaning as the terms ((recognition)) recognized or registered as used with respect to student organizations in chapter 504-26 WAC.

(b) Pursuant to established policies, the university department responsible for student affairs makes student organization registration determinations.

(2) Membership in organizations.

(a) Full membership in student organizations is restricted to enrolled graduate and undergraduate students at Washington State University.

(b) Faculty and others may participate as honorary or associate members at the option of the organization, as specified in the organization's constitution.

(c) Only a full member may be eligible to vote on matters of business or hold an elective office in the organization.

(d) To serve as an elected officer of a registered student organization, a student must not be on academic or behavioral probation with the university.

(e) Washington State University does not register any student organization which directly or indirectly denies membership to any student because of race, religion, sex, color, national or ethnic origin, age, marital status, sexual orientation, gender identity/gender expression, veteran status or disability except that the permissibility of a single-sex organization is evaluated in accordance with Title IX guidelines. Registered student organizations must ensure that additional policies and procedures do not create de facto differentiation. Student organizations that select their members based on commitment to a creed or a set of beliefs (e.g., political or religious beliefs) may limit full membership and participation privileges to eligible individuals who, upon individual inquisition, affirm that they agree with the organization's beliefs and support the organization's goals; so long as no eligible individual is excluded from membership and participation on the basis of race, religion, sex, color, national or ethnic origin, age, marital status, sexual orientation, gender identity/gender expression, veteran status, or disability except that the permissibility of a single-sex organization is evaluated in accordance with Title IX guidelines.

((e))) (f) Students who believe they have been denied membership in violation of subsection (2)((e)) (e) of this section may appeal to the director of the university department responsible for student affairs.

((f)) (g) Washington State University does not register a student organization if registration would violate local, state, or federal law.

(3) Requirements and responsibilities of registered student organizations.

(a) Officers of each organization are responsible for seeing that their organization abides by university rules and regulations concerning scheduling, financial projects, advertising, and other policies applicable to their respective campus as established by the department responsible for student affairs.

(b) Registered student organizations must have an advisor (see WAC 504-28-020 Advisors).

(c) Registered student organization funds must be deposited into a registered student organization account with the university. The university financial services office assists registered student organizations in establishing accounts and processing transactions.

(d) Each registered student organization must keep the following records current with the university department responsible for student affairs:

(i) Constitution and bylaws.

(ii) Officer roster card.

(iii) ~~(Student organization report including activities, accomplishments, and financial status.)~~

((iv))) Student event registration forms.

(4) Privileges of registered student organizations.

(a) Registered student organizations have the right to sponsor on-campus activities that comply with university rules, policies, and guidelines.

(b) The university department responsible for student affairs assists registered student organizations in understanding and complying with all relevant legal statutes and university rules and policies.

[Statutory Authority: RCW 28B.30.150. WSR 09-11-070, § 504-28-010, filed 5/14/09, effective 6/14/09. Statutory Authority: RCW 28B.30.150, 28B.30.095 and 28B.30.125. WSR 95-07-046, § 504-28-010, filed 3/8/95, effective 4/8/95. Statutory Authority: RCW 28B.30.095, 28B.30.125, 28B.30.150 and chapter 28B.19 RCW. WSR 87-12-013 (Order 87-1), § 504-28-010, filed 5/26/87. Statutory Authority: RCW 28B.30.125 and 28B.30.150. WSR 80-07-015 (Order 80-2, Resolution No. 6/80-15), § 504-28-010, filed 6/11/80; Order 77-2, § 504-28-010, filed 8/3/77; Order 75-1, § 504-28-010, filed 7/7/75, effective 9/1/75; Order 73-5, § 504-28-010, filed 8/1/73; Order 5, § 504-28-010, filed 9/26/72; Order 3, § 504-28-010, filed 8/5/71.]

WSR 22-18-100

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-08—Filed September 7, 2022, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-016.

Title of Rule and Other Identifying Information: Ecology is proposing amendments to chapter 173-455 WAC, Air quality fee rule, in WAC 173-455-038, 173-455-050, 173-455-100, 173-455-120, 173-455-130, and 173-455-140. Ecology is also proposing to add new WAC 173-455-031.

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-455>.

Hearing Location(s): On October 13, 2022, at 1:00 p.m., webinar. Join online and see instructions <https://waecy-wa-gov.zoom.us/meeting/register/tZ0odeGprDIpHNIQTapzEtSYVReHobOYLJCC>. For audio call US toll number 1-253-215-8782 and enter access code 895 2812 9366; or to receive a free call back, provide your phone number when you join the event. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Date of Intended Adoption: February 15, 2023.

Submit Written Comments to: Caitlin Cannon, send US mail to Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, email Caitlin.Cannon@ecy.wa.gov, submit comments online <https://aq.ecology.commentinput.com/?id=Zax2u>, by October 20, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email ecyADAcoordinator@ecy.wa.gov, visit <https://ecology.wa.gov/accessibility> for more information, by October 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule:

- WAC 173-455-031: Adds WAC 172-455-031 to establish a new process to update fees more frequently.
- Updates the hourly fee rate to reflect the new ecology rate:
 - WAC 173-455-050 Carbon dioxide mitigation fee.
 - WAC 173-455-100 Fee related to reasonably available control technology (RACT).
 - WAC 173-455-120 New source review (NSR) fees.
 - WAC 173-455-130 Air pollution standards variance fee.
 - WAC 173-455-140 Nonroad engine permit fee.
- WAC 173-455-038: Updates to specify that greenhouse gas reporting fees are found in chapter 173-441 WAC, Reporting of emissions of greenhouse gases.
- WAC 173-455-100: Relocates hourly fees pursuant to RCW 70A.15.2220 for replacement or substantial alteration of control technology to the permit fee in WAC 173-455-120 to improve usability.
- Removes fees from the text of the rule language and places them in a fee table for improved readability and to facilitate regular fee updates.
- Updates the rule language to improve the readability and clarity.

- Updates outdated references to chapter 70.94 RCW throughout the rule to chapter 70A.15 RCW.

Updates are needed to recover program costs for permit issuance and to establish a new streamlined process for future fee revisions.

There is a widening gap between ecology's air quality permit fees and permit program costs. These fees were established based on program costs in 2012. A workload analysis of air quality permitting hours billed between 2017 and 2021 across all job classes was performed to determine a new hourly rate which reflects current program costs. The cost calculated by the workload analysis was then rounded down to the nearest dollar to ensure permit fees do not exceed program costs.

New WAC 173-455-031 establishes a consistent and predictable process for streamlined future fee adjustment. Ecology will create a program budget and workload analysis each year after 2023. If fee adjustments are needed, ecology may set new fees for a two-year period following a public comment period. Industry has communicated with ecology that they prefer more frequent incremental increases rather than infrequent significant fee increases, and they use frequent (often annual) incremental increases for their customers as well. The new fee adjustment process will allow ecology to charge fees that cover program costs and give permittees small cost adjustments that occur predictably.

Reasons Supporting Proposal: Current fees do not cover current program costs. Chapter 70A.15 RCW directs ecology to charge fees to cover program costs. The updated fees will cover permitting program costs.

The new streamlined process to update fees will guide regular, smaller adjustments to fees. This allows permittees to better anticipate small future fee adjustments and allows ecology to continue charging adequate fees.

Statutory Authority for Adoption: Chapter 70A.15 RCW, Washington Clean Air Act.

Statute Being Implemented: RCW 70A.15.2210, [70A.15].2230, and [70A.15].6270.

Rule is necessary because of federal law and federal court decision, 42 U.C.W. [U.S.C.] 7661-7661f and chapter 70A.15 RCW.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Washington department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Caitlin Cannon, Lacey, Washington, 360-489-4046; Implementation and Enforcement: Sanjay Barik, Union Gap, 509-379-1464 or Karin Baldwin, Spokane, 509-329-3452.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Caitlin Cannon, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-489-4046, Washington relay service or TTY call 711 or 877-833-6341, email Caitlin.Cannon@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (RFA); chapter 19.85 RCW based on meeting criteria referenced in RCW 19.85.025(3) as defined by the Administrative Procedure Act in RCW 34.05.310. The small business economic impact statement (SBEIS) below includes a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline. We identify relevant RFA exemptions (if any) for each set of requirements.

The proposed rule does impose more-than-minor costs on businesses.

SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document

(Ecology publication no. 22-02-031, August 2022).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: Baseline:

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments. For this rule making, the baseline includes:

- Chapter 70A.15 RCW, Washington Clean Air Act.
- Chapter 173-455 WAC, Air quality fee rule.

Establish a process to revise future fees: **Baseline:** Currently, the only way ecology can increase air quality permitting fees is to propose changes through the formal rule-making process. This typically takes over 12 months. The last time ecology adopted rules to increase permit fees was 2012.

Proposed: The proposed rule amendments would allow ecology to increase permit fees every two years. The proposed process is outlined below. Ecology would:

1. Prepare the draft annual budget.
2. Determine if the current fees cover costs. If they don't, proceed to step 3.
3. Draft a fee schedule that evenly distributes the increase across the permits where the current fee isn't covering costs.
4. Post the draft budget and draft fee schedule on ecology's website by August 1 of the year before the new fee schedule would go into effect.
5. Provide a 30-day public comment period on the draft budget and draft fee schedule.
6. Post the final budget and fee schedule on ecology's website by December 1 of the year before the new fee schedule goes into effect.

Expected Impact: We expect the proposed rule amendment to benefit permitted industries because they would have more predictability about any future fee increases. This will allow them to better prepare for the changes. Our permit customers told us they would prefer more frequent incremental increases because it will better align with how they increase the fees for their customers.

Relevant Exemptions: RCW 34.05.310 (4)(b), 34.05.310 (4)(g)(ii).

Update hourly fee rates: **Baseline:** The baseline permit fees were based on the 2012 hourly rate of \$95 for an environmental engineer 5 (EE5).

Proposed: The proposed rule amendments would update the hourly fee rate to reflect the new rate for engineering review and processing of applications for permits. Generally, ecology is proposing to increase:

- All hourly fees in the amended sections to match the new \$119/hour rate.
- All flat fees by 25 percent to match the increase from \$95/hour to \$119/hour.

Initial fees are equal to the number of covered hours, multiplied by \$119.

Ecology is also proposing to change the hourly rate for initial fees related to the prevention of significant deterioration (PSD) program. Each of these permits have a base fee which is calculated by an estimated number of hours multiplied by the hourly rate. The estimates for the necessary number of work hours are as follows:

- Written PSD applicability determinations - increased from six to 40 hours to reflect actual workload.
- PSD permit revisions - where the revision is not administrative or a major modification - reduced from 79 hours to 40 hours to reflect actual workload.
- Other fees: Second and third tier review fees initial hours reduced from 106 to 84 hours to reflect actual workload.

The new fees for new source review and other air permits would go into effect 31 days after the proposed rule changes are adopted. This is scheduled for February of 2023. The proposed new fee schedule is provided in the preliminary regulatory analyses.

Expected Impact: We expect permittees to incur increased costs associated with this proposed rule change. We also expect a benefit of closing the gap between fees charged and actual program costs. The proposed change would also allow ecology to continue providing permitting services in a comprehensive and timely manner without pulling funding sources from other projects and programs. Permittees would benefit from timely service, without suffering losses in investments due to permitting timeline and development delays.

The new source review fee is charged to any owners or operators of new sources of air emissions that are required to submit a notice of construction (NOC) application for any proposed new sources or emissions units, including portable emission sources.

The number of air quality permit applications varies from year to year and it is hard to predict how many of the covered parties would be affected in the future. We analyzed permitting activity data provided by the AQ program. Based on the three years of quarterly data, we found a variety of issued and renewed air quality permits, such as NOC approval orders and PSD permits. On average, we identified 32 initial or renewed permits and 29 revised permits for ecology to process each year. We also found that there were 213 unique entities that applied for an air quality permit since the beginning of 2020.

The cost of issuing an air quality permit varies depending on the type of source and complexity of the permit. Ecology is authorized to charge fees as needed to cover the costs associated with issuing permits.

Relevant Exemption: RCW 34.05.310 (4)(g)(ii).

Adding new references and improving readability and clarity:

Baseline: The baseline rule refers to old laws and is missing key references, and some parts are unclear or poorly organized.

Proposed: The proposed rule amendments would update the following references:

- WAC 173-455-038: Update the list of fees not included in chapter 173-455 WAC to note that greenhouse gas reporting fees are found in chapter 173-441 WAC, Reporting of emissions of greenhouse gases.
- Update outdated references to chapter 70.94 RCW throughout the rule to chapter 70A.15 RCW.

The proposed rule amendments would also clarify and organize language and requirements to improve clarity and facilitate compliance. Other changes are necessary to make rule provisions consistent.

Expected Impact: We do not expect any behavioral impact from these changes. However, the proposed rule amendments may reduce transitory costs such as time spent trying to understand the rule requirements and how to comply.

Relevant Exemption: RCW 34.05.310 (4)(d).

COSTS OF COMPLIANCE: EQUIPMENT: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

COSTS OF COMPLIANCE: SUPPLIES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR: There is a high variability between the number and complexity of permit applications ecology receives each year. We chose to base our analysis on the average gap between the new source review permit fees and actual program costs every year due to the outdated fee schedule. This approach allows us to roughly predict the total costs of the proposed new hourly fee rates for the permittees compared to the baseline.

Based on a seven-year period of data on ecology's funding and revenues, the average annual underfunding of the new source review program is equal to \$79,981.

Ecology analyzes impacts over a 20-year time span from the time of rule adoption, which is typically enough time to reflect consequences of a rule making. To take into account the new process for updating new source review and other air permitting fees for year 2024 and beyond, we adjusted future average annual costs by previously estimated changes per biennium by 4.7 percent. Note that biannual costs increase at a nominal rate, meaning that it reflects wage increases for each period in 2022 dollars.

To reflect the inflation effects over a 20-year period, we calculate the total 20-year present value based on the current real discount rate for the change caused by updated fees that would result in increased costs for all permittees. The total 20-year present value for the change caused by the adjusted fees is \$1,774,989.

As described in the preliminary regulatory analyses for this rule making, we determined an average of 32 initial or renewed permits and 29 revised permits (for an average total of 61 permit actions) for ecology to process each year. Although the cost of processing a permit application vastly differs from one application to another, the average cost of fee increases per business is \$1,311. Please see the table below for an example of the difference of initial fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase.

Action	Current	Proposed	Difference
Basic project	\$1,520	\$1,904	\$384
Complex project	\$10,070	\$12,614	\$2,544

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

COSTS OF COMPLIANCE: OTHER: Not applicable.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in the preliminary regulatory analyses for this rule making. In this section, we estimate compliance costs per employee.

As discussed in the preliminary regulatory analyses, there is a high variability between the number and complexity of permit applications ecology receives each year. We chose to base our analysis on the average gap between the new source review permit fees and actual program costs every year due to the outdated fee schedule. This approach allows us to roughly predict the total costs of the proposed new hourly fee rates for the permittees compared to the baseline.

The average affected small business likely to be covered by the proposed rule amendments employs about five people. The largest 10 percent of affected businesses employ an average of 3,225 people. Although the cost of processing a permit application vastly differs from one application to another, the average cost of fee increases per business is \$1,311. Based on cost estimates in the preliminary regulatory analyses, we estimated the following compliance costs per employee:

Average cost of fee increase	
Average small business employment	5
Average employment at largest ten percent of businesses	3,225
Small business cost per employee	\$262
Largest business cost per employee	\$0.41

In the preliminary regulatory analyses, we also described an example of the difference of initial fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase. The table below shows ranges of compliance costs per employee based on estimates from the example.

Cost of compliance differences	Low	High
Average small business employment	5	5
Average employment at largest 10 percent of businesses	3,225	3,225
Small business cost per employee	\$77	\$509
Largest business cost per employee	\$0.12	\$0.80

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses, and therefore ecology must include elements in the proposed rule amendments to mitigate this disproportion, as far as is legal and feasible.

Note that this example is illustration of initial fees. In reality, project may be subject to several different fees and ecology has observed that small businesses frequently get less complex and therefore lower fee permits.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur increased costs under the proposed rule amendments could experience reduced sales or revenue if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to:

- Each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs).
- The specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices.
- The relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

The proposed rule amendments affect a wide variety of businesses. Those industries that are more able to control their pricing, likely due to geographic restrictions in various types of construction, for example, may trade off price increases for reduced sales (which may or may not result in reduced revenue). Industries with greater competi-

tion, such as various service industries, may not be as able to control their pricing, and would not see associated impacts to sales and revenue.

In general, the impact on Washington economy is insignificant. The percent difference from year to year is zero percent for all industries. The table below shows absolute economic indicators for years 2022 and 2041.

Industry	Impact on output in 2022, in 2022 thousand dollars	Impact on output in 2041, in 2022 thousand dollars
Whole state	-31.6	-18.3
Manufacturing	26	-8.5
Farm	-16.7	-16.7
Construction	-7.6	-2.6
Utilities	-5.8	-5.3
Mining	-9.0	-8.5
Other services	-1.8	-1.4

MITIGATION OF DISPROPORTIONATE IMPACT: RFA states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, eliminating substantive regulatory requirements.
- (b) Simplifying, reducing, eliminating recordkeeping and reporting requirements.
- (c) Reducing the frequency of inspections.
- (d) Delaying compliance timetables.
- (e) Reducing or modifying fine schedules for noncompliance.
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (as described in the preliminary regulatory analyses for this rule making), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

Ecology considered all of the above options and maintained all legal and feasible elements in the baseline rule that reduce costs. In addition, ecology considered the alternative rule contents discussed in the preliminary regulatory analyses for this rule making, and excluded those alternatives that would have imposed excess compliance burden on businesses.

The baseline rule already includes the following elements, which are unchanged in the proposed rule amendments, to reduce costs to small businesses.

The baseline rule already allows ecology to reduce costs for qualifying small businesses by 50 percent or \$312, whichever is greater. This is not changing.

Moreover, the baseline rule includes an extreme hardship reduction due to outstanding economic circumstances for qualifying small businesses. This is not changing.

In addition, the new streamlined process established in the proposed amendments to develop subsequent fee schedules may help small businesses better plan for permit expenses.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in our development of the proposed rule amendments, as follows:

- Ecology held two webinars for stakeholders concerning the proposed rule amendments on May 19 and June 8, 2022.
- The following stakeholders attended the webinars: Central WA Concrete, Par Pacific, Simplot, WSPA, HF Sinclair, NW Pulp and Paper, Granite Construction Company.
- Stakeholder meeting notices and materials and project updates were sent to the groups identified above and posted to ecology's rule-making website.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

- 327992 Mineral processing - (Not Rock Crushing)
- 33641 Manufacturing - Specialty
- 112112 Cattle Feedlot
- 115114 Seed Cleaner
- 212313 Rock Crusher
- 221112 Boiler - Diesel/Hog/Natural Gas
- 221320 Wastewater Treatment Plant
- 238320 Paintbooth - Non Autobody
- 311119 Animal Feed Manufacture
- 311225 Canola Oil Seed Press
- 311423 Dehydrator
- 311999 Food Processing - Nutrient Extraction
- 312140 Mint Distillery
- 321999 Wood Products
- 322120 Manufacturing - Paper
- 322211 Manufacturing - Natural Fiber Products
- 322299 Manufacturing - Natural Fiber Products
- 324121 Asphalt
- 324122 Asphaltic Cement
- 325199 Chemical Plant - Synthetic/Organic Chemical Mfg
- 325314 Fertilizer Manufacturer
- 325315 Composting
- 326140 Manufacturing - Polystyrene
- 327320 Concrete
- 331314 Smelter - Primary
- 331511 Foundry - Ferrous
- 331529 Foundry - Non Ferrous
- 331920 Coffee Roaster
- 332813 Metal Anodizing/Plating
- 333241 Food Processing - General
- 336612 Manufacturing - Boat
- 424510 Grain Handling > 10 million bushels
- 424710 Gasoline - Terminal
- 518210 Generators - Emergency
- 562212 Landfill - Open

- 611519 Firefighter Training Center
- 811121 Paintbooth - Autobody
- 812220 Crematory Human/Animal
- 812320 Laundry - Dry Cleaners

IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state. The results of REMI E3+ model show insignificant impact on jobs in the affected industries.

Industry	Initial jobs impact	Jobs impact in 20 years
Whole state	-0.5	-0.4
Manufacturing	-0.03	-0.02
Farm	-0.07	-0.05
Construction	-0.09	-0.04
Utilities	-0.006	-0.005
Mining	-0.06	-0.04
Other services	-0.004	-0.003

The values in the above table represent number of full-time employees (FTEs) that would be laid off each year as a result of increased production costs. The number of FTEs decreased does not accumulate over the year and represent single point data compared to the baseline.

A copy of the statement may be obtained by contacting Caitlin Cannon, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-489-4046, Washington relay service or TTY call 711 or 877-833-6341, email Caitlin.Cannon@ecy.wa.gov.

September 7, 2022
Heather R. Bartlett
Deputy Director

OTS-3904.1

NEW SECTION

WAC 173-455-031 Process to update fees. (1) New source review and other air permitting fees for year 2024 and beyond.

(a) Fee schedule:

(i) Starting in 2023, ecology must prepare an annual budget that reflects the cost of the program;

(ii) Ecology will base the budget on the program costs per RCW 70A.15.2210(2);

(iii) Ecology may choose to establish fees to cover program costs for a two-year period;

(iv) If increases of permitting fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.

(b) Public notice. Ecology must:

(i) Post the draft budget and draft new source review and other air quality permitting fee schedule on ecology's website by August 1st of the year before the fee schedule goes into effect.

(ii) Provide a 30-day public comment period on the draft budget and draft fee schedule.

(iii) Post the final budget and fee schedule on ecology's website by December 1st of the year before the fee schedule goes into effect.

(2) Carbon dioxide mitigation fees for year 2024 and beyond.

(a) Fee schedule:

(i) Starting in 2023, ecology must prepare an annual budget that reflects the cost of the program.

(ii) Ecology will base the budget on the program costs per RCW 70A.15.6270(3);

(iii) Ecology may choose to establish fees to cover program costs for a two-year period;

(iv) If increases of carbon dioxide mitigation fees are necessary, ecology must evenly distribute the increased program cost as a percentage of the increased costs across all sources subject to the program.

(b) Public notice. Ecology must:

(i) Post the draft budget and draft carbon dioxide mitigation fee schedule on ecology's website by August 1st of the year before the fee schedule goes into effect.

(ii) Provide a 30-day public comment period on the draft budget and draft fee schedule.

(iii) Post the final budget and fee schedule on ecology's website by December 1st of the year before the fee schedule goes into effect.

[]

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

WAC 173-455-038 Fees not included. This chapter contains all fees required by the air quality program except the following:

(1) Air operating permit - Fees can be found in chapter 173-401 WAC.

(2) Agricultural burning - Fees can be found in chapter 173-430 WAC.

(3) ~~((Motor vehicle emission inspection))~~ Reporting of emissions of greenhouse gases - Fees can be found in chapter ~~((173-422A))~~ 173-441 WAC.

[Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-038, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-038, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-455-050 Carbon dioxide mitigation program fees. (1)

Statutory authorization. RCW ((70.94.892)) 70A.15.6270 authorizes ecology to determine, assess, and collect fees sufficient to cover costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval for a facility. ((The order of approval must specify)) Ecology may also collect fees sufficient to cover the additional costs ((necessary)) to monitor the source's conformance to the carbon dioxide mitigation plan.

(2) **Fees.** ((The)) Table 1 in this subsection lists the fees for the carbon dioxide mitigation program for 2023. These fees are ((added)) additional to the fees established in WAC 173-455-120, when the carbon dioxide mitigation plan requirements are triggered.

((Activity))	Fee
a. Application review	\$95.00/hr. ¹ not to exceed \$500.00
b. Mitigation plan approval	
i. Payment to third party	\$100.00 ²
ii. Purchase of CO ₂ credits	\$95.00/hr. ³
iii. Direct investment	\$95.00/hr. ⁴
c. Routine compliance monitoring	
i. Payment to third party	\$100.00 ⁵ annually until full amount paid
ii. Purchase of CO ₂ credits	\$95.00/hr. ⁶
iii. Applicant controlled project	\$95.00/hr. ⁶

¹ Estimated using an EE3 per hour rate with a cap.

² Small fee primarily to check math and that the source is using an EFSEC approved qualified organization.

³ Estimated EE3 per hour rate to check that the credits purchased will be verifiable and from a reputable trading or marketing organization.

⁴ Estimated using an EE3 per hour rate.

⁵ Same as rationale for ² above.

⁶ Verify and confirm credits with the trading or marketing organization.))

Table 1 Carbon Dioxide Mitigation Program 2023 Fee Schedule

Activity	Fee
Application review	\$119.00/hr. not to exceed \$595.00
Mitigation plan approval Payment to third party	\$125.00 ¹
Mitigation plan approval Purchase of CO ₂ credits	\$119.00/hr. ²
Mitigation plan approval Direct investment	\$119.00/hr.
Routine compliance monitoring Payment to third party	\$125.00 annually until full amount paid

<u>Activity</u>	<u>Fee</u>
<u>Routine compliance monitoring</u>	<u>\$119.00/hr.³</u>
<u>Purchase of CO₂ credits</u>	
<u>Routine compliance monitoring</u>	<u>\$119.00/hr.³</u>
<u>Applicant controlled project</u>	

¹ Fee to cover the cost of checking the accuracy of calculations and that the source is using an independent qualified organization approved by the energy facility site evaluation council per RCW 80.70.050.

² Fee to cover cost of checking that the credits will be purchased from a reputable trading or marketing organization and will be derived from mitigation that is real, verified, permanent, enforceable, and additional per RCW 80.70.030.

³ Fee to cover the cost of verifying and confirming with the trading or marketing organization that the purchased credits derive from mitigation that is real, verified, permanent, enforceable, and additional per RCW 80.70.030.

(3) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031(2).

(4) The department or authority may use RCW ((70.94.085)) 70A.15.1570 to structure a cost-reimbursement agreement with the applicant.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-455-050, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-050, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 18-22-006, filed 10/25/18, effective 11/25/18)

WAC 173-455-100 Fees related to reasonably available control technology (RACT). (1) General. Ecology ((may)) will assess and collect ((a)) fees as authorized in RCW ((70.94.153 or 70.94.154)) 70A.15.2230(7) and described in subsections (2) through ((5)) (4) of this section.

((Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application for replacement or substantial alteration of control technology - Ninety-five dollars per hour.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - Ninety-five dollars per hour.

((3))) Fee schedule for source-specific determinations where ecology performs RACT analysis and determination.

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology

will require a fee for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - Two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ((ten)) 10 tons per year of any toxic air pollutant - One thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ((ten)) 10 tons per year of any toxic air pollutant - Two thousand dollars.

((4))) (3) Fee schedule for source-specific determinations where the source performs the RACT analysis and ecology conducts review and issues a determination.

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - One thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - Five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - Ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, ecology will require a fee for a RACT analysis and determination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit ((one hundred)) 100 tons per year or more of any criteria pollutant - One thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, ecology will require the following fees as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ((ten)) 10 tons per year of any toxic air pollutant - Five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ((ten)) 10 tons per year of any toxic air pollutant - One thousand dollars.

((5))) (4) Fee schedule for categorical RACT determinations. Ecology shall assess fees for categorical RACT determinations (for categories with more than three sources) as shown below. Ecology shall base the fees described in (a) of this subsection on the most complex source within a category. When determining complexity level for the most complex source in the category, the emission rate or number of types of emission units that results in the highest complexity level will determine the fee for the source category. Except as provided in (b) and (d) of this subsection, ecology will determine fees for individual sources in the category by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than ((twenty)) 20 tons

per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - Twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than ((twenty)) 20 tons per year and less than ((one hundred)) 100 tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ((ten)) 10 tons per year, or the analysis addresses two to five types of emissions units) - Fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed ((one hundred)) 100 tons per year, average source emissions of one or more individual toxic air pollutants exceed ((ten)) 10 tons per year, or the analysis addresses more than five types of emission units) - One hundred thousand dollars.

(b) If ecology is evaluating an emission unit for more than one categorical RACT determination within a five-year period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

((6) Small business) (5) RACT fee reductions for small businesses. Ecology may reduce the RACT analysis/review and determination fees identified in subsections (2) through ((5)) (4) of this section for a small business as provided in this subsection.

(a) Small business reduction.

(i) To qualify for ((the)) a small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020.

((b)) (ii) To receive a small business fee reduction, the owner or operator of a small business must include sufficient information in an application submitted in accordance with (c) of this subsection demonstrating that the business meets the ((conditions of (a))) requirements of a small business as required under (a)(i) of this subsection. ((One of the following must sign the application:)

((i)) An authorized corporate officer in the case of a corporation;
((ii)) An authorized partner in the case of a limited or general partnership; or

((iii)) The proprietor in the case of a sole proprietorship.

((c)) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

((d)) (iii) For small businesses ((determined to be)) that ecology determines are eligible for a small business fee reduction under (a)(i) of this subsection, ecology shall reduce the RACT analysis/review and determination fee to the greater of:

((i)) (A) Fifty percent of the RACT analysis/review and determination fee; or

((ii)) Two hundred fifty dollars.

((e)) If due to special economic circumstances,) (B) Three hundred twelve dollars.

(b) Extreme hardship reduction.

(i) If the fee assessed after a reduction ((determined)) granted under ((d)) (a)(iii) of this subsection imposes an extreme hardship

on a small business due to special economic circumstances, the small business may request an extreme hardship fee reduction.

(ii) To receive an extreme hardship reduction, the owner or operator of a small business must provide sufficient evidence to support a claim of ((an)) special economic circumstances and extreme hardship in an application submitted in accordance with (c) of this subsection.

((The factors which)) (iii) Ecology may consider the following factors in determining whether an owner or operator has demonstrated special economic circumstances and ((in setting the)) extreme hardship, and in determining the amount of the fee ((include)) reduction:

((+i))) (A) Annual sales;

((+ii))) (B) Labor force size;

((+iii))) (C) Market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and

((+iv))) (D) Average annual profits.

(c) Application for fee reduction.

(i) One of the following representatives of the small business must sign the application:

(A) An authorized corporate officer in the case of a corporation;
(B) An authorized partner in the case of a limited or general partnership; or

(C) The proprietor in the case of a sole proprietorship.

(ii) Ecology may request additional information as needed to verify the application information. If ecology determines the owner or operator has made false statements in the application, ecology may deny the fee reduction request and revoke any previously granted fee reductions for that business.

(d) In no case will ecology reduce a RACT analysis/review and determination fee to an amount below ((one hundred dollars)) \$125.

((+7))) (6) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

((+8))) (7) Fee payments. A source shall pay fees specified in subsection ((+4))) (3)(a) of this section when the source submits a notice of construction application to ecology. Sources shall pay other fees specified in subsections (2) through ((+7))) (6) of this section no later than ((thirty)) 30 days after receipt of an ecology billing statement. For fees specified in subsection ((+5))) (4) of this section, ecology will mail a billing statement for one-half of the payment from each source when the source category rule-making effort is commenced as noted by publication of the CR-101 form in the Washington State Register. Ecology will mail a billing statement for the second half of the payment when the proposed rule is published in the Washington State Register. Ecology will not issue an order of approval or other action approving or identifying a source to be at RACT until the source has paid all fees. A source shall make all fees collected under this regulation payable to the Washington department of ecology.

((+9))) (8) Dedicated account. Ecology shall deposit all control technology fees it collects from air operating permit program sources in the air operating permit account created under RCW 70.94.015. Ecology shall deposit all control technology fees collected from nonair chapter 173-401 WAC program sources in the air pollution control account.

((+10))) (9) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of

source-specific determinations under subsections (2) through ((4)) (3) of this section, ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection ((5)) (4) of this section, ecology shall track time and expenditures on a source-category basis.

((11)) (10) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

[Statutory Authority: Chapter 70.94 RCW, RCW 70.94.151, 70.94.153, and 70.94.892. WSR 18-22-006 (Order 16-09), § 173-455-100, filed 10/25/18, effective 11/25/18. Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-100, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-100, filed 5/3/07, effective 6/3/07.]

AMENDATORY SECTION (Amending WSR 12-24-051, filed 11/30/12, effective 12/31/12)

WAC 173-455-120 New source review and other air permitting fees.

(1) General requirements.

(a) The fees in this section apply to:

(i) Permit applications received on or after ((July 1, 2011)) (effective date of adopted rule).

(ii) Requests for ecology review of other actions covered by this section received by ecology on or after ((July 1, 2011)) (effective date of adopted rule).

(b) Components of permitting fees. Permit fees include initial fees and may include an additional hourly fee. The initial fee covers up to the number of review hours specified ((in)) for each fee in this section.

(c) A project may be subject to multiple fees set forth in this section. For example, a project may be subject to both minor and major new source review permit fees and second or third tier review. In addition a project may be subject to fees under WAC 173-455-050 and 173-455-100.

(d) An applicant must submit initial fees with ((an)) the associated permit application, notice, or request. An application, notice or request is incomplete until initial fees have been paid.

(i) For purposes of WAC 173-400-111 (1)(e), ((initial)) application fees are considered ((application)) initial fees under this section.

(ii) If ecology determines a project is complex after an applicant ((submitted)) paid the basic project initial fee, then the application is incomplete until the applicant ((pays)) has paid the initial complex project fee.

(iii) If ecology determines that a higher initial fee is due after an applicant submitted an application or request, the application or request is considered incomplete until the applicant ((pays)) has paid the ((new)) higher initial fee.

(e) If the initial fee paid by an applicant does not cover the cost of processing the application, notice, or request, then ecology ((shall)) must assess ((a)) an additional fee based on the actual

costs for review in excess of the hours specified ((in each)) for the initial fee. The ((assessed)) additional fee must be assessed at a rate of ((ninety-five dollars)) \$119 per hour of ecology staff time expended, or the rate established under WAC 173-455-031.

(f) Ecology cannot finalize an action covered under this section until all fees ((are)) have been paid. (WAC 173-400-111 (3)(i).)

(g) ((An applicant must pay fees that are due)) For fees assessed by invoice from ecology, the applicant must pay fees that are due within ((thirty)) 30 days from the date of the invoice. Ecology will cease processing all applications for which the required fees have not been received within ((thirty)) 30 days of an invoice.

(h) At the time of filing a permit application, notice, or request, an applicant must pay all delinquent air quality fees associated with the facility((. This is)) in addition to the fees required by this section. Delinquent fees may include, but are not limited to, registration fees, civil penalties ((awarded to)) issued by ecology, or other outstanding fees due under this section.

(i) All fees collected under this ((rule)) section must be made payable to the department of ecology.

(j) Fees assessed under this section apply without regard to whether ecology approves or denies ((a)) the underlying permit application, notice, or request.

Permit fees.

Minor new source review.

(2) Fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase. (WAC ((173-400-110 and)) 173-400-110(3).)

(a) ((Basic project: One thousand five hundred dollars plus an hourly rate of ninety-five dollars after sixteen hours.

This fee covers up to sixteen hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above sixteen hours.

((b) Complex project: Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

((i) This fee covers up to one hundred six hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred six hours.

((ii) An application)) Table 1 lists the 2023 fees for review of an application for a new source or for the modification of an existing source with an emissions increase.

Table 1: 2023 Fees for review of a permit application for a new source or for the modification of an existing source with an emissions increase (WAC 173-400-110(3))

Action	Initial Fee	Hourly Rate
Basic Project	\$1,904.00 for up to 16 hours of review	\$119.00 per hour starting at 17 hours
Complex Project	\$12,614.00 for up to 106 hours of review	\$119.00 per hour starting at 107 hours

((b) A project is considered complex if the emissions associated with the application include at least one pollutant for which emissions increases are greater than the levels in ((the following table:)) Table 2.

Table 2: Emission Threshold Table

(WAC 173-400-030)

<u>((Air Contaminant)) Pollutant</u>	<u>Annual Emission Rate</u>
Carbon monoxide	100 tons per year
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Particulate matter (PM)	25 tons per year of PM emissions
	15 tons per year of PM ₁₀ emissions
	10 tons per year of PM _{2.5} emissions
Volatile organic compounds	40 tons per year
Fluorides	3 tons per year
Lead	0.6 tons per year
Sulfuric acid mist	7 tons per year
Hydrogen sulfide (H ₂ S)	10 tons per year
Total reduced sulfur (including H ₂ S)	10 tons per year
Reduced sulfur compounds (including H ₂ S)	10 tons per year

((iii)) (c) Ecology may also determine that a project is complex based on consideration of factors that include, but are not limited to:

- ((A)) (i) Number and complexity of emission units;
- ((B)) (ii) Volume of emissions, including toxicity of emissions;
- ((C)) (iii) Amount and complexity of modeling; or
- ((D)) (iv) Number and kind of applicable state and federal requirements.

(d) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(3) Fees for review of a requested change to an existing order of approval. (WAC 173-400-111 (7) and (8).)

(a) Ecology will not charge a fee for correcting a mistake by ecology in a permit.

(b) "Administrative or simple change" ((: Two hundred dollars plus an hourly rate of ninety-five dollars after three hours.

(i) This fee covers up to three hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above three hours.

(ii) An administrative or simple change means:

(A)) means:

(i) An action not subject to a mandatory public comment period
((in)) under WAC 173-400-171; and

((B)) (ii) The ((reissued)) modified approval order requires one hour or less of engineering evaluation by ecology and ((no)) does not authorize physical modification of equipment; and

((C)) (iii) Changes in permit conditions are based on actual operating conditions and review of the operating conditions requires one hour or less of engineering evaluation by ecology and the

((change)) modification does not cause a change in allowable emissions.

(c) Complex changes: ((Eight hundred seventy-five dollars plus an hourly rate of ninety-five dollars after ten hours).

(i) This fee covers up to ten hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above ten hours.

((iii))) (i) This fee ((excludes)) does not apply to an administrative or simple change ((and changes to)) or to the modification of an existing permit that results in an emissions increase.

((iii))) (ii) Examples of complex changes include, but are not limited to:

(A) Changes requiring more than one hour of engineering review by ecology;

(B) Consolidation of permits not allowed under simple change;

(C) Request for review of ((a permit)) whether a proposed action ((that)) is exempt from new source review under WAC 173-400-110(5) (Table 110(5) emission-based exemption levels); or

(D) Changes requiring mandatory public comment under WAC 173-400-171(3).

(d) ((The fee for a permit modification (as defined in WAC 173-400-030) is located in subsection (2)(a) or (b) of this section.

(4) Request to extend approval to construct or modify a stationary source issued under minor new source review that is set to expire (WAC 173-400-111(7)): One hundred dollars.

An applicant may request an eighteen-month extension of an approval to construct.

(5))) Table 3 lists the 2023 fees for review of a requested change to an existing order of approval.

Table 3: 2023 Fees for review of a requested change to an existing order of approval (WAC 173-400-111 (7) and (8))

Action	Initial Fee	Hourly Rate
Correcting a mistake by ecology in a permit	No fee	No fee
Administrative or simple change	\$357.00 for up to 3 hours of review	\$119.00 per hour starting at 4 hours
Complex change	\$1,190.00 for up to 10 hours of review	\$119.00 per hour starting at 11 hours
Permit extension request (WAC 173-400-111(7))	\$119.00	Not applicable

(e) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(4) Fees for review of an application for coverage under a general order of approval (WAC 173-400-560).

(a) ((Category A general order.

(i) SEPA review complete: Five hundred dollars.

(ii) SEPA review required: Seven hundred eighty-five dollars.

((iii))) Category A consists of the following general order of approval, including any subsequent updating or replacement:

((A))) (i) Concrete batch plants (No. 08-AQG-002);

((B))) Rich burn, spark ignition, gaseous fossil fuel-powered emergency electrical generators (No. 06-AQG-005);

((C))) (ii) Perchloroethylene dry cleaners using less than 2100 gallons per year (No. 06-AQG-003);

((D)) (iii) Stationary and portable rock crushers (No. 11AQ-GO-001);

((E)) (iv) Small water heaters and steam generating boilers (No. 08-AQ-G003); and

((F)) (v) Automobile body repair and refinishing shops (No. 08-AQG-001).

(b) ((Category B general order.

(i) SEPA review complete: Eight hundred seventy five dollars.

(ii) SEPA review required: One thousand one hundred sixty dollars.

((iii))) Category B includes a general order of approval developed on or after January 1, 2011. Category B covers, but is not limited to, the following general order of approval, including any subsequent updating or replacement:

((A)) (i) Portable and stationary asphalt plants (No. ((10AQ-GO-01-[10AQ-GO-01])) 10AQ-GO-01); and

((B)) (ii) Dairy manure anaerobic digesters (No. 12AQ-GO-01).

((6)) (c) Table 4 lists the 2023 fees for Category A and B reviews of applications for coverage under a general order of approval.

Table 4: 2023 Fees for review of an application for coverage under a general order of approval (WAC 173-400-560)

Type of source seeking coverage under a general order of approval	SEPA review complete	SEPA review required
Portable and stationary concrete batch plants (No. 08-AQG-002)	\$625.00	\$981.00
Perchloroethylene dry cleaners using less than 2,100 gallons per year (No. 06-AQG-003)	\$625.00	\$981.00
Stationary and portable rock crushers (No. 11AQ-GO-001)	\$625.00	\$981.00
Small water heaters and steam generating boilers (No. 08-AQ-G003)	\$625.00	\$981.00
Automobile body repair and refinishing shops (No. 08-AQG-001)	\$625.00	\$981.00
Portable and stationary asphalt plants (No. 10AQ-GO-01)	\$1,093.00	\$1,450.00
Dairy manure anaerobic digesters (No. 12AQ-GO-01)	\$1,093.00	\$1,450.00
Any other source seeking coverage under a general order of approval	\$1,093.00	\$1,450.00

(d) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(5) Fees for review of a relocation ((ef)) notice for a portable source in ecology's jurisdiction under WAC 173-400-036((, 173-400-110 or 173-400-560.

(a) This fee applies to a portable source who intends to relocate in ecology's jurisdiction with an approval order from another permitting authority.

(i) SEPA review complete: One hundred fifty dollars.

(ii) SEPA review required: Four hundred thirty-five dollars.

(b) This fee applies to a portable source who intends to relocate in ecology's jurisdiction and has operated under an ecology issued approval order or is approved for coverage under an ecology issued general order of approval.

(i) SEPA review complete: No fee.

(ii) SEPA review required: Two hundred eighty-five dollars.

((7))) (a) Table 5 lists the 2023 fees for review of a relocation notice for a portable source.

Table 5: 2023 Fees for review of a relocation notice for a portable source (WAC 173-400-036)

Action	SEPA Review Complete	SEPA Review Required
Portable source has approval order issued by a clean air agency	\$187.00	\$543.00
Portable source has approval order issued by ecology	No fee	\$365.00

((b)) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

((6)) Fees for review of a request to establish a voluntary emission limit (WAC 173-400-091) ((: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.

((a)) This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours)).

((b))) (a) This fee applies to a regulatory order issued under WAC 173-400-091 that places a limit on emissions.

((i)) This fee applies to the review of a request to establish the emission limit in a stand-alone regulatory order.

((ii)) This fee does not apply when an emission limit is included as a condition in an approval order for a notice of construction application.

((8))) (b) Table 6 lists the 2023 fees to establish a voluntary emission limit.

Table 6: 2023 Fees for review of a request to establish a voluntary emission limit (WAC 173-400-091)

Action	Initial Fee	Hourly Rate
Review of request to establish a voluntary emission limit (WAC 173-400-091)	\$714.00 for up to 6 hours of review	\$119.00 per hour starting at 7 hours

((c)) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

((7)) Fees for review of a request to replace or substantially alter control technology ((: Refer to WAC 173-455-100(4) for fee schedule)) without an increase in emissions (RCW 70A.15.2220).

((a)) Table 7 lists the 2023 fees for review of a request to replace or substantially alter control technology without an increase in emissions.

Table 7: 2023 Fees for review of a request to replace or substantially alter control technology without an increase in emissions (RCW 70A.15.2220)

Action	Initial Fee	Hourly Rate
Review notice of construction application	No initial fee	\$119.00 per hour
Review RACT analysis and determination for affected emission unit	No initial fee	\$119.00 per hour

((b)) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

Major new source review preapplication and permit fees.

((9) Request for a written prevention of significant deterioration applicability determination (WAC 173-400-720) or preapplication assistance: Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.

This fee covers up to six hours of staff time to review the request and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

((10))) (8) Fees for review of a prevention of significant deterioration (PSD) determination (WAC 173-400-720 ((and)), 173-400-730, and 173-400-750).

((a) PSD permit application: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) PSD permit application where greenhouse gases are the sole PSD pollutant being reviewed: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

((11) Revision to a prevention of significant deterioration permit (WAC 173-400-750).

(a) Administrative revision as defined in WAC 173-400-750(3): One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

(b) All other revisions (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(c) The fee for a major modification of a PSD permit (as defined in WAC 173-400-720) is located in subsection (10)(a) of this section.

((12) Request to extend the following major source approvals that are set to expire: Five hundred dollars. This provision applies to each of the following:

(a) PSD permit, including a major modification;
(b) PSD permit revision;

(c) Approval order for major source nonattainment area permitting; and

(d) A change to an approval order for major source nonattainment area permitting.

((13))) (a) Table 8 lists the 2023 fees for the review of a request for prevention of significant deterioration (PSD) determination.

Table 8: 2023 Fees for review of a request for prevention of significant deterioration (PSD) determination

Action	Initial Fee	Hourly Rate
Written PSD applicability determination (WAC 173-400-720)	\$4,760.00 for up to 40 hours of review	\$119.00 per hour starting at 41 hours
Preapplication assistance beyond the application assistance meeting ecology provides	\$714.00 for up to 6 hours of review	\$119.00 per hour starting at 7 hours
PSD permit application - New (WAC 173-400-720 and 173-400-730)	\$18,802.00 for up to 158 hours of review	\$119.00 per hour starting at 159 hours
PSD permit application - Limited to greenhouse gases	\$9,401.00 for up to 79 hours of review	\$119.00 per hour starting at 80 hours
PSD permit revision - Administrative (as defined in WAC 173-400-750(3))	\$2,380.00 for up to 20 hours of review	\$119.00 per hour starting at 21 hours
PSD permit revisions - Revision not administrative or major modification	\$4,760.00 for up to 40 hours of review	\$119.00 per hour starting at 41 hours
PSD permit revision - Major modification (WAC 173-400-720)	\$18,802.00 for up to 158 hours of review	\$119.00 per hour starting at 159 hours
Permit extension request (WAC 173-400-730(5))	\$625.00	No hourly fee

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(9) Fees for nonattainment area major new source review.

((a) A notice of construction application subject to WAC 173-400-830: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) Change to an approval order issued under WAC 173-400-830:

((i) Request to change permit conditions under WAC 173-400-111(8) that is not subject to mandatory public comment in WAC 173-400-171: One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

((ii) All other permit changes (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and issue a final decision. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

((iii) The fee for a major modification (as defined in WAC 173-400-810) of an approval order is located in subsection (13)(a) of this section.

((14))) (a) Table 9 lists the 2023 fees for nonattainment area major new source review.

Table 9: 2023 Fees for nonattainment area major new source review

Action	Initial Fee	Hourly Rate
Notice of construction application (WAC 173-400-830)	\$18,802.00 for up to 158 hours of review	\$119.00 per hour starting at 159 hours

Action	Initial Fee	Hourly Rate
Change in permit conditions - Major modifications for an order issued under WAC 173-400-830	\$18,802.00 for up to 158 hours of review	\$119.00 per hour starting at 159 hours
Change in permit conditions under WAC 173-400-111(8) - Action not subject to mandatory public comment under WAC 173-400-171(3)	\$2,380.00 for up to 20 hours of review	\$119.00 per hour starting at 21 hours
Changes in permit conditions - All other changes	\$9,401.00 for up to 79 hours of review	\$119.00 per hour starting at 80 hours
Permit extension request (WAC 173-400-111(7))	\$625.00	No hourly fee

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

(10) Fees for review of plant-wide applicability limits (WAC 173-400-720).

((a) Request to establish new plant-wide applicability limits: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers up to one hundred fifty-eight hours of staff time to review the request and establish a plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above one hundred fifty-eight hours.

(b) All other requests, such as increase or renew plant-wide applicability limits; or process an expired plant-wide applicability limit: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers up to seventy-nine hours of staff time to increase, renew or process a retired plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above seventy-nine hours.) (a) Table 10 lists the 2023 fees for review of requests to establish plant-wide applicability limits.

Table 10: 2023 Fees for review of plant-wide applicability limits (WAC 173-400-720)

Action	Initial Fee	Hourly Rate
Plant-wide applicability limits - Establish new limits	\$18,802.00 for up to 158 hours of review	\$119.00 per hour starting at 159 hours
Plant-wide applicability limits - All other requests	\$9,401.00 for up to 79 hours of review	\$119.00 per hour starting at 80 hours

(b) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.

Other fees.

((15) Second tier review (WAC 173-460-090): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

(b) A second tier petition that becomes subject to third tier review during the course of evaluation continues as a second tier peti-

~~tion for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed one hundred six hours.~~

(16) ~~Third tier review (WAC 173-460-100): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.~~

~~(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and third tier petition, and make a recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.~~

~~(b) This fee does not apply to a second tier petition that becomes a third tier petition.~~

~~(17) Ecology may enter into a written cost reimbursement agreement with an applicant as provided in RCW 70.94.085. Ecology will be reimbursed at a rate of ninety-five dollars per hour.~~

~~(18) Small business)) (11) Table 11 lists the 2023 fees for all other permitting actions, including second and third tier reviews.~~

~~(a) A second tier petition (WAC 173-460-090) that becomes subject to third tier review during the course of evaluation continues as a second tier petition for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed 85 hours.~~

~~(b) The fee listed in Table 11 for third tier review (WAC 173-460-100) does not apply to a second tier petition that becomes a third tier petition under (a) of this subsection.~~

Table 11: Other fees for 2023

Action	Initial Fee	Hourly Rate
<u>Second tier review (WAC 173-460-090)</u>	\$9,996.00 for up to 84 hours of review	\$119.00 per hour starting at 85 hours
<u>Third tier review (WAC 173-460-100)</u>	\$9,996.00 for up to 84 hours of review	\$119.00 per hour starting at 85 hours
<u>Cost reimbursement agreement as provided in RCW 70A.15.1570</u>	No initial fee	\$119.00 per hour
<u>Review of a request for a variance under WAC 173-400-180</u>	No initial fee	\$119.00 per hour
<u>Review of a notification of intent to operate under WAC 173-400-035</u>	No initial fee	\$119.00 per hour
<u>Hourly rate for other permitting actions</u>	No initial fee	\$119.00 per hour

~~(c) Ecology will post a new fee schedule for the fees in this section starting in 2024 in accordance with WAC 173-455-031.~~

~~(12) Fee reductions for small businesses. ((The new source review)) Ecology may reduce the permitting fees identified in subsections (2) through ((+7))) (6) of this section ((may be reduced)) for a small business as provided in this subsection.~~

~~(a) Small business reduction.~~

~~((i) To qualify for ((the)) a small business ((new source review)) permitting fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020.~~

~~((In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.~~

((b))) (ii) To receive a small business fee reduction, the owner or operator of a small business must include sufficient information in ((the)) an application submitted in accordance with (c) of this section, demonstrating that the ((conditions of)) business meets the requirements of a small business as required under subsection (1)(a) of this ((subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(e) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

((d))) section.

((iii) For small businesses ((determined to be)) that ecology determines are eligible for a small business fee reduction under (a)(ii) of this subsection, ((the new source review fee)) ecology shall ((be reduced)) reduce the permitting fee to the greater of:

((((i))) (A) Fifty percent of the ((new source review)) permitting fee; or

((((ii))) Two hundred fifty)) (B) Three hundred twelve dollars.

((e) If, due to special economic circumstances,)) (b) Extreme hardship reduction.

(i) If the fee assessed after a reduction ((determined)) granted under ((((d))) (a)(iii) of this subsection imposes an extreme hardship on a small business due to special economic circumstances, the small business may request an extreme hardship fee reduction.

(ii) To receive an extreme hardship reduction, the owner or operator of a small business must provide sufficient evidence to support a claim of ((an)) special economic circumstances and extreme hardship in an application submitted in accordance with (c) of this subsection.

((The factors which)) (iii) Ecology may consider the following factors in determining whether an owner or operator has demonstrated special economic circumstances and ((in setting the)) extreme hardship, and in determining the amount of the fee ((include)) reduction:

(A) Annual sales;

(B) Labor force size;

(C) Market conditions which affect the owner's or operator's ability to pass the cost of the ((new source review)) permitting fees through to customers; and

(D) Average annual profits. ((In no case will a new source review fee be reduced below one hundred dollars))

(c) Application for fee reduction.

(i) One of the following representatives of the small business must sign the application:

(A) An authorized corporate officer in the case of a corporation;

(B) An authorized partner in the case of a limited or general partnership; or

(C) The proprietor in the case of a sole proprietorship.

(ii) Ecology may request additional information as needed to verify the application information. If ecology determines the owner or operator has made false statements in the application, ecology may deny the fee reduction request and revoke any previously granted fee reductions for that business.

(d) In no case will ecology reduce a permitting fee below \$125.

((19)) (13) Fee reductions for pollution prevention initiatives. Ecology may reduce the permitting fees ((defined)) identified in subsections (2) through ((7)) (6) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

((20)) (14) Tracking revenues, time, and expenditures. Ecology must track revenues from the fees collected under this subsection on a source-specific basis.

((21) ~~Periodic review. To ensure that fees cover the cost of processing the actions in this section, ecology shall review and update this section as necessary.~~))

[Statutory Authority: RCW 70.94.151, chapter 70.94 RCW, 2011 1st sp.s. c 50 § 302(2), and section 302(9), chapter 158, 2012 2nd sp.s. c 7. WSR 12-24-051 (Order 11-07), § 173-455-120, filed 11/30/12, effective 12/31/12. Statutory Authority: RCW 70.94.152 and 2011 c 5 § 301(28). WSR 11-12-077 (Order 10-04), § 173-455-120, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 70.94.181, [70.94.]152, [70.94.]331, [70.94.]650, [70.94.]745, [70.94.]892. WSR 07-11-018 (Order 06-14), § 173-455-120, filed 5/3/07, effective 6/3/07.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-455-130	Air pollution standards variance fee.
WAC 173-455-140	Nonroad engine permit fee.

WSR 22-18-101

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed September 7, 2022, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-053.

Title of Rule and Other Identifying Information: WAC 182-548-1100 Federally qualified health centers—Definitions, 182-548-1200 Federally qualified health centers—Enrollment, 182-548-1300 Federally qualified health centers—Services, 182-548-1400 Federally qualified health centers—Payment methodologies, 182-548-1450 Federally qualified health centers—General payment information, 182-548-1500 Federally qualified health centers—Change in scope of service rate adjustment, 182-548-1600 Federally qualified health centers—Appeals related to overpayments, 182-548-1650 Federally qualified health centers—Appeals related to rate setting, 182-549-1100 Rural health clinics—Definitions, 182-549-1200 Rural health clinics—Enrollment, 182-549-1300 Rural health clinics—Services, 182-549-1400 Rural health clinics—Reimbursement and limitations, 182-549-1450 Rural health clinics—General payment information, 182-549-1500 Rural health clinics—Change in scope of service rate adjustment, 182-549-1600 Rural health clinics—Appeals related to overpayments, 182-549-1650 Rural health clinics—Appeals related to rate setting.

Hearing Location(s): On October 11, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_1XqE8IwbRdW1KM7ehMa5ug. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: October 12, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 11, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by September 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to clarify the change in scope and reconciliation policies and adding an end date to WAC 182-549-1400(8) and 182-548-1400(8) to align with the APM4 memorandum of understanding (MOU), a new section on appeals, and housekeeping changes.

Chapters 182-548 and 182-549 WAC, housekeeping changes throughout.

WAC 182-548-1100/182-549-1100, added definitions for "cost center," "encounter-eligible client," and "medicare economic index (MEI)." Updated the "encounter" definition to include telemedicine/audio-only telemedicine.

WAC 182-548-1200 and 182-549-1200 added language "properly completed" in reference to enrollment packets and core provider agreements (CPA).

WAC 182-548-1200 (2) (b), added language to clarify that both the enrollment packet AND the CPA must be received.

WAC 182-548-1400(3) (b), changed language from "increased" to "adjusted" as the MEI could be an increase or a decrease.

WAC 182-549-1400 (3) (b), updated language to avoid delays in setting a final RHC encounter rate.

WAC 182-548-1400(8) and 182-549-1400(8), added end date of the payment methodology to align with the MOU for participating FQHCs and RHCs.

WAC 182-548-1450/182-549-1450 (1) (a), (1) (b), (2), (3), added language regarding one encounter per day limitation and appropriate exceptions.

WAC 182-548-1450/182-549-1450(4), added new subsection to address circumstances where there are additional visits resulting in additional encounters.

WAC 182-548-1450 (7) (b)(iii)(A) and (B), added new subsection regarding prospective enhancement payment adjustments related to over and under payments.

WAC 182-549-1450 (7) (a)(ii)(C), (D), and (E), added new subsection regarding prospective enhancement payment adjustments related to over and under payments.

WAC 182-548-1500/182-549-1500, added new subsection (2) (d)(i), (ii)(A) and (B) to allow more flexibility for submitting a change in scope.

WAC 182-548-1500/182-549-1500, added new subsection (2) (d)(viii) to clarify effective date for prospective change in scope supported by less than 12 months of data.

WAC 182-548-1500/182-549-1500 (3) (a), added language to include agency email address; a clarification to the submission process.

WAC 182-548-1500/182-549-1500 (4) (a)(ii), added language regarding documentation submission to clarify denial process.

WAC 182-548-1500/182-549-1500 (4) (b)(ii), removed language; clarified the language and moved to change scope in subsection (2) (d).

WAC 182-548-1500/182-549-1500, added new subsections (5) (b)(ii), (iii), and (iv), to clarify documentation the agency requires for post change in scope review.

WAC 182-548-1500/182-549-1500(6), removed section, created new appeals section.

WAC 182-548-1600/182-549-1600, new section appeals related to overpayments to reflect procedures in which FQHCs and RHCs can appeal their overpayments.

WAC 182-548-1650/182-549-1650, new section appeals related to rate setting to reflect the appropriate criteria for appeals related to FQHC and RHC rate setting.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: 42 U.S.C. 1396a(bb), 42 U.S.C. 1396d (2) (A); RCW 41.05.021, 41.05.160.

Statute Being Implemented: 42 U.S.C. 1396a(bb), 42 U.S.C. 1396d (2) (A); RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, 42 U.S.C. 1396a(bb), 42 U.S.C. 1396d (2) (A).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Michaela Snook, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-0917.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 42 U.S.C. 1396a(bb), 42 U.S.C. 1396d (2) (A). Compliance with these federal guidelines is a requirement to receive federal match funding for FQHC and RHC providers. In addition, noncompliance with these rules could result in federal audit risks to the agency.

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

September 7, 2022
Wendy Barcus
Rules Coordinator

OTS-4021.2

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-548-1100 Federally qualified health centers—Definitions. This section contains definitions of words or phrases that apply to this chapter. Unless defined in this chapter ((or)), the definitions found in chapter 182-500 WAC((, the definitions found in the Webster's New World Dictionary)) apply.

"APM index" - The agency uses the alternative payment methodology (APM) ((is used)) to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI) and Washington-specific variable measures.

"Base year" - The year that is used as the benchmark in measuring ((a center's)) FQHC's total reasonable costs for establishing base encounter rates.

"Cost center" - A category of service approved to be provided by the FQHC under WAC 182-548-1200 and reported in the medicaid cost report. The categories of services provided by the FQHC may include medical, mental health, dental, maternity support services, and substance use disorder.

"Cost report" - A statement of costs and provider utilization that occurred during the time period covered by the cost report. FQHCs

((must)) complete a cost report when there is a request for a change in scope rate adjustment, there is a rebasing of the encounter rate, or ((when)) the ((medicaid)) agency sets a base rate.

"Encounter" - A face-to-face or telemedicine (including audio-only telemedicine) visit between ((a)) an encounter-eligible client and ((a)) an FQHC provider ((e.g., a physician, physician's assistant, or advanced registered nurse practitioner))) who exercises independent judgment when providing services that qualify for ((an)) encounter rate reimbursement.

"Encounter-eligible client" - A client who receives benefits under Title XIX (medicaid) or Title XXI (CHIP).

"Encounter rate" - A cost-based, facility-specific rate for covered FQHC services ((, paid to an FQHC for each valid encounter it bills)).

"Enhancements (also called managed care enhancements)" - A monthly amount ((paid by)) the agency pays to FQHCs for each client enrolled with a managed care organization (MCO). ((MCOs)) FQHCs may contract with ((FQHCs)) MCOs to provide services under managed care programs. FQHCs receive enhancements from the agency in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

"Federally qualified health center (FQHC)" - An entity that has entered into an agreement with the Centers for Medicare and Medicaid Services (CMS) to meet medicare program requirements under 42 C.F.R. 405.2434 and:

((+1)) (a) Is receiving a grant under section 329, 330, or 340 of the federal Public Health Service (PHS) Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the ((Public Health Service)) PHS Act;

((+2)) (b) Based on the recommendation of the PHS, is determined by CMS to meet the requirements for receiving such a grant;

((+3)) (c) Was treated by CMS, for purposes of medicare part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or

((+4)) (d) Is an outpatient health program or facility operated by a tribe or tribal organization under the federal Indian Self-Determination and Education Assistance Act of 1975 or ((by)) an Urban Indian organization receiving funding under Title V of the federal Indian Health Care Improvement Act of 1976.

"Fee-for-service" - A payment method the agency uses to pay providers for covered medical services provided to Washington apple health clients, ((except these)) which excludes services provided ((under)) by the agency's ((prepaid)) contracted managed care organizations ((or those)) and services that qualify for an encounter rate.

"Interim rate" - The rate ((established by)) the agency establishes to pay an FQHC for covered FQHC services prior to the establishment of a permanent rate for that ((facility)) FQHC.

"Medicare economic index (MEI)" - An index published in the Federal Register used in the calculation of changes to determine allowed charges for physician services. The agency adjusts FQHC encounter rates and enhancement rates by the MEI each year on January 1st.

"Rebasing" - The process of recalculating encounter rates using actual cost report data.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-11-008, § 182-548-1100, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodi-

fied as § 182-548-1100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, BIPA of 2000 Section 702, sections 201 and 209 of 2009-2011 budget bill, and 42 U.S.C. 1396a(bb). WSR 10-09-002, § 388-548-1100, filed 4/7/10, effective 5/8/10.]

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-548-1200 Federally qualified health centers—Enrollment.

(1) To enroll as a Washington apple health provider and receive payment for services, a federally qualified health center (FQHC) must:

- (a) Receive FQHC certification for participation in the Title XVIII (medicare) program according to 42 C.F.R. 491;
- (b) Sign a core provider agreement with the medicaid agency; and
- (c) Operate in accordance with applicable federal, state, and local laws.

(2) The medicaid agency uses one of two timeliness standards for determining the effective date of a medicaid-certified FQHC.

(a) The agency uses medicare's effective date if the FQHC returns a properly completed core provider agreement and a properly completed FQHC enrollment packet within ((sixty)) 60 calendar days from the date of ((medicare's letter notifying the center)) CMS's written notification to the FQHC of the medicare certification.

(b) The agency uses the date when both the ((signed core provider agreement is)) properly completed FQHC enrollment packet and properly completed core provider agreement have been received if ((the FQHC returns the properly completed core provider agreement and FQHC enrollment packet sixty-one)) either of the required documentation is submitted 61 or more calendar days after the date of medicare's letter notifying the clinic of the medicare certification.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-11-008, § 182-548-1200, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-548-1200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, BIPA of 2000 Section 702, sections 201 and 209 of 2009-2011 budget bill, and 42 U.S.C. 1396a(bb). WSR 10-09-002, § 388-548-1200, filed 4/7/10, effective 5/8/10.]

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-548-1300 Federally qualified health centers—Services.

(1) The following outpatient services qualify for FQHC encounter rate reimbursement:

- (a) Physician services specified in 42 C.F.R. 405.2412.
- (b) Nurse practitioner or physician assistant services specified in 42 C.F.R. 405.2414.
- (c) Clinical psychologist and clinical social worker services specified in 42 C.F.R. 405.2450.
- (d) Visiting nurse services specified in 42 C.F.R. 405.2416.
- (e) Nurse-midwife services specified in 42 C.F.R. 405.2401.
- (f) Preventive primary services specified in 42 C.F.R. 405.2448.

(2) The medicaid agency pays for FQHC services when they are:

(a) Within the scope of an encounter-eligible client's Washington apple health program. Refer to WAC 182-501-0060 scope of services; and
(b) Medically necessary as defined in WAC 182-500-0070.

(3) FQHC services may be provided by any of the following individuals in accordance with 42 C.F.R. 405.2446:

- (a) Physicians;
- (b) Physician assistants (PA);
- (c) Nurse practitioners (NP);
- (d) Nurse midwives or other specialized nurse practitioners;
- (e) Certified nurse midwives;
- (f) Registered nurses or licensed practical nurses; and
- (g) Psychologists or clinical social workers.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-11-008, § 182-548-1300, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-548-1300, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, BIPA of 2000 Section 702, sections 201 and 209 of 2009-2011 budget bill, and 42 U.S.C. 1396a(bb). WSR 10-09-002, § 388-548-1300, filed 4/7/10, effective 5/8/10.]

AMENDATORY SECTION (Amending WSR 20-24-083, filed 11/25/20, effective 1/1/21)

WAC 182-548-1400 Federally qualified health centers—Payment methodologies. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb) (2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb) (6). As required by 42 U.S.C. 1396a (bb) (6), payments made under the APM ((will be)) are at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate.

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at ((one hundred)) 100 percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then ((increased)) adjusted each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of ((one hundred)) 100 percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) The agency determines PPS base encounter rates (~~((are determined))~~) using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are ~~((increased))~~ adjusted by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency (~~(will)~~) recoups from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM, known as APM-3, is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and ~~((will be))~~ are increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency ~~((will))~~ recoups from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency ~~((will))~~ periodically rebases the encounter rates using the FQHC cost reports and other relevant data. Rebasing ~~((will be))~~ is done only for FQHCs that are reimbursed under the APM.

(e) The agency ~~((will))~~ ensures that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating FQHCs for services provided beginning July 1, 2017, and ending December 31, 2022.

(a) Each FQHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM, known as APM-4, is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each FQHC. The PMPM rate accounts for enhancement payments in accordance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the FQHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the FQHC a PMPM rate in addition to the amounts the MCO pays the FQHC. The agency may prospectively adjust the FQHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) FQHC encounter rate changes.

(iv) In accordance with 42 U.S.C. 1396a (bb) (5) (A), the agency performs an annual reconciliation.

(A) If the FQHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b) (iii) of this subsection.

(B) If the FQHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b) (iii) of this subsection.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396a (bb) (5) (A). WSR 20-24-083, § 182-548-1400, filed 11/25/20, effective

1/1/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-016, § 182-548-1400, filed 5/30/17, effective 7/1/17; WSR 15-11-008, § 182-548-1400, filed 5/7/15, effective 6/7/15; WSR 14-14-056, § 182-548-1400, filed 6/26/14, effective 8/1/14. Statutory Authority: RCW 41.05.021. WSR 12-16-060, § 182-548-1400, filed 7/30/12, effective 8/30/12. WSR 11-14-075, recodified as § 182-548-1400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, BIPA of 2000 Section 702, sections 201 and 209 of 2009-2011 budget bill, and 42 U.S.C. 1396a(bb). WSR 10-09-002, § 388-548-1400, filed 4/7/10, effective 5/8/10.]

AMENDATORY SECTION (Amending WSR 20-24-083, filed 11/25/20, effective 1/1/21)

WAC 182-548-1450 Federally qualified health centers—General payment information. (1) The agency limits FQHC encounter((s)) rate reimbursement to one per client, per day except in the following circumstances:

(a) ((The visits occur with different health care professionals with different specialties)) There is a subsequent visit due to the client suffering an illness or injury after the first visit that requires separate evaluation and treatment on the same day for unrelated diagnoses; or

(b) There are separate visits ((with unrelated diagnoses.)) in different types of cost centers that occur with different health care professionals. (For example, a client with a separate medical and dental visit on the same day.)

(2) ((FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (4) of this section apply.

(4) Payments for non-FQHC)) All services provided within the same cost center performed on the same day must be included in the same encounter, except for in the circumstance outlined in subsection (1)(a) of this section.

(3) Services and supplies incidental to an encounter are included in the encounter rate payment and must be billed on the same claim.

(4) FQHCs must provide services in a single encounter that are typically rendered in a single visit based on clinical guidance and standards of care.

(a) FQHCs must not split services into multiple encounters unless there is clinical justification. (For example, fluoride treatment and sealants must be provided on the same day as an encounter-eligible service.)

(b) Clinical justification must be based on medical necessity and documented in the client's record.

(5) Services provided in an FQHC that are not encounter-eligible are ((made)) paid on a fee-for-service basis ((using the agency's published)) according to agency rules, billing guides and fee schedules. ((Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(5) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.))

(6) Managed care organization (MCO) contracted services provided in an FQHC for clients enrolled in an MCO are paid for by the MCO.

(7) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb) (5) (A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments.

(i) For each FQHC, the agency compares the amount paid in enhancement payments to the amount determined by the following formula:
((Managed care encounters times encounter rate) less actual MCO payments for FQHC services.)

(Managed care encounters x encounter rate) - MCO payments for FQHC services

(ii) If the agency determines that the FQHC ((has been)) was overpaid, the agency recoups the appropriate amount. If the agency determines that the FQHC ((has been)) was underpaid, the agency pays the difference.

((7) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs.) (iii) The agency may prospectively adjust the FQHC's monthly enhancement payments if the agency determines the FQHC has been overpaid or underpaid in the annual reconciliation.

(A) The agency uses the FQHC's most current reconciliation data, and any supplemental information provided by the FQHC to determine if any adjustment to the enhancement rate is necessary.

(B) If the agency determines a prospective adjustment to enhancement payments is necessary, the agency notifies the FQHC in writing at least 30 calendar days prior to the enhancement payment adjustment.

(8) The agency pays the encounter rate and the enhancement payments with respect to services provided to encounter-eligible clients. Services provided to clients who are enrolled in ((state-only)) medical programs that are ((considered)) paid only in state funds are not encounter-eligible; these claims are paid on a fee-for-service basis regardless of the type of service performed.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396a (bb) (5) (A). WSR 20-24-083, § 182-548-1450, filed 11/25/20, effective 1/1/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-016, § 182-548-1450, filed 5/30/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 15-05-023, filed 2/9/15, effective 3/12/15)

WAC 182-548-1500 Federally qualified health centers—Change in scope of service rate adjustment. In accordance with 42 U.S.C. 1396a (bb) (3) (B), the agency ((will)) adjusts its payment rate to a federally qualified health center (FQHC) to take into account any increase or

decrease in the scope of the FQHC's services. The procedures and requirements for any such rate adjustment are described below.

(1) **Triggering events.**

(a) An FQHC may file a change in scope of services rate adjustment application with the agency on its own initiative only when ((÷)) the FQHC satisfies the criteria described in (a)(i), (ii), and (iii) of this subsection.

(i) When the cost to the FQHC of providing covered health care services to eligible clients has increased or decreased due to one or more of the following triggering events:

(A) A change in the type of health care services the FQHC provides;

(B) A change in the intensity of health care services the FQHC provides. Intensity means the total quantity of labor and materials consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the FQHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the FQHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or amount of services has decreased and the cost of an average encounter has decreased((÷ and)).

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter((; and)).

(iii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable under OMB Circular A-122 or successor (the *Uniform Grants Guidance*) and other applicable state and federal law.

(b) At any time, the agency may instruct the FQHC to file a medicaid cost report with a position statement ((eff)) indicating whether the FQHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services ((the FQHC "position statement")).

(i) The FQHC ((must)) files a completed cost report and position statement no later than ((ninety)) 90 calendar days after receiving the instruction from the agency ((to file same; provided, however,)). If the FQHC has ((recently completed its fiscal year)) not received the annual audit report at the time of the agency's request ((but has not received its annual audit by the time of the request)), the FQHC ((may at its option wait and respond to the agency's request ninety days after the FQHC receives its annual audit or it may submit a cost report)) informs the agency, in writing, that it will submit one of the following alternatives:

((A) The cost report and position statement within 90 calendar days of receiving its annual audit report; or

(B) The cost report and position statement based on the prior year's audit.

(ii) The agency reviews the FQHC's cost report and position statement ((will be reviewed)) under the same criteria listed above for an application for a change in scope adjustment.

(iii) The agency will not request more than one change in scope in a calendar year.

(2) **Filing requirements.**

(a) The FQHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

((+i+)) (b) Unless instructed to file an application by the agency, the FQHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

((+ii+)) (c) The FQHC ((must)) files for a change in scope of service rate adjustment ((no later than)) based on the following deadlines, whichever is later:

(i) Ninety calendar days after the end of the ((calendar)) FQHC's fiscal year ((in which)), demonstrating that the change in scope occurred as documented in the medicaid cost report.

(ii) Ninety calendar days after the FQHC ((believes the change in scope occurred or in which the FQHC)) learned, based on its annual audit, that the cost threshold in subsection (1)(a)(ii) of this section was met ((, whichever is later)) during the fiscal year.

((+b+)) (d) Prospective change in scope.

(i) ((To file)) A prospective change in scope of service rate adjustment application must state each triggering event listed in subsection (1)(a)(i) of this section that supports the FQHC's application.

(ii) A prospective change in scope of service rate adjustment application ((, the FQHC must submit projected costs sufficient to establish an interim rate. A prospective change is)) must be based on one of the following:

(A) A change the FQHC plans to implement in the future. The FQHC submits 12 months of projected data and costs sufficient to establish an interim rate; or

(B) A change which occurred in the FQHC's most recent fiscal year with less than 12 months of experience to support the change reflected in the medicaid cost report. The FQHC submits a combination of historical data and projected costs sufficient to establish an interim rate.

(iii) The interim rate adjustment ((will go)) goes into effect after the change takes effect.

((+ii+)) (iv) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

((+iii+)) (v) If the change in scope occurs ((fewer)) less than ((ninety)) 90 calendar days after the FQHC submitted a complete application to the agency, the interim rate ((must)) takes effect no later than ((ninety)) 90 calendar days after the complete application was submitted to the agency.

((+iv+)) (vi) If the change in scope occurs more than ((ninety)) 90 calendar days but ((fewer)) less than ((one hundred eighty)) 180 calendar days after the FQHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

((+v+)) (vii) If the FQHC fails to implement a change in service identified in its prospective change in scope of service rate adjust-

ment application within ((one hundred eighty)) 180 calendar days, the application is void and the FQHC may resubmit the application to the agency, in ((which case)) such a circumstance, ((a)(i)) (b) of this subsection does not apply.

((e)) (viii) If the change in scope is based on a triggering event that already occurred but is supported by less than 12 months of data in the filed cost report, the interim rate takes effect on the date the FQHC submitted the completed application to the agency.

(e) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application must state each ((qualifying)) triggering event listed in subsection (1)(a)(i) of this section that supports its application and include ((twelve)) 12 months of data documenting the cost change caused by the ((qualifying)) triggering event. A retrospective change in scope is a change that took place in the past and the FQHC is seeking to adjust its rate based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the FQHC ((filed the)) submitted a complete application ((with)) to the agency, as determined by the agency.

(3) **Supporting documentation.**

(a) To apply for a change in scope of service rate adjustment, the FQHC ((must include)) submits the following supporting documentation ((in the application)) to the agency in electronic format by email to fghcrhc@hca.wa.gov:

(i) A narrative description of the proposed change in scope;

(ii) A description of each cost center on the cost report that was or will be affected by the change in scope;

(iii) The FQHC's most recent audited financial statements, if audit is required by federal law;

(iv) The implementation date for the proposed change in scope; and

(v) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include the projected medicaid cost report ((or)) and the projected medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit for the ((twelve-month)) 12-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicaid cost report ((or)) and the medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for ((twelve months or the fiscal year)) one of the following:

(i) The 12-month period following the implementation of the triggering event; or

(ii) The fiscal year following implementation of the proposed change in scope.

(4) **Review of the application.**

(a) Application processing.

(i) The agency ((must)) reviews the application for completeness, accuracy, and compliance with program rules.

(ii) Within ((sixty)) 60 calendar days of receiving the application, the agency ((must notify)) notifies the FQHC of any deficient documentation or request any additional information that is necessary to process the application. If the FQHC does not provide the agency with the documentation or information within 30 calendar days of the request, the agency may deny the application.

(iii) Within ((ninety)) 90 calendar days of receiving a complete application, including any additional documentation or information that the agency might request, the agency ((must)) sends the FQHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement if the rate change is implemented.

(iv) ((Failure to act within ninety days will mean that the change is considered denied by the agency and)) The FQHC may appeal the decision on the application as provided for in ((subsection (6) of this section)) WAC 182-548-1650.

(b) Determining rate for change in scope.

(i) The agency ((must)) sets an interim rate for prospective changes in scope by adjusting the FQHC's existing rate by the projected average cost per encounter of any approved change. The agency ((will)) reviews the costs to determine if they are reasonable, and set a new interim rate based on the determined cost per encounter.

(ii) The agency ((must)) sets an adjusted encounter rate for retrospective changes in scope by adjusting the FQHC's existing rate by the documented average cost per encounter of the approved change.

((Projected costs per encounter may be used if there are insufficient historical data to establish the rate.)) The agency ((will)) reviews the costs to determine whether they are reasonable, and set a new rate based on the determined cost per encounter.

(c) If the FQHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment ((requested by the FQHC will modify)) approved by the agency modifies the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final responsibility and authority for making decisions related to changes in scope.

(5) Post change in scope of services rate adjustment review.

(a) If the approved change in scope ((application)) rate adjustment was based on a retrospective change in scope application (i.e., based on a year or more of actual encounter data), the agency may conduct a post change in scope rate adjustment review.

(b) If the approved change in scope ((application was)) rate adjustment was based on a prospective change in scope application (i.e., based on less than a full year of actual encounter data), the FQHC ((must)) submits the following information to the agency within ((eighteen)) 18 months of the effective date of the rate adjustment:

(i) Medicaid cost report ((or)) and medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for ((twelve)) 12 consecutive months of experience following implementation of the change in scope; ((and))

(ii) A narrative description of the request;

(iii) A description of each cost center on the cost report that was affected by the change in scope;

(iv) The FQHC's most recent audited financial statements, if audit is required by applicable law; and

(v) Any additional documentation requested by the agency.

(c) The agency ((will)) conducts the post change in scope review within ((ninety)) 90 calendar days of receiving the cost report and encounter data from the FQHC.

(d) If necessary, the agency ((will)) adjusts the encounter rate within ((ninety)) 90 calendar days to ensure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review ((will)) takes effect on the date the agency issues its adjustment. The new rate ((will be)) is prospective.

(f) If the FQHC fails to submit the post change in scope cost report or related encounter data, the agency ((must)) provides written notice to the center or clinic ((of the deficiency)) within ((thirty)) 30 calendar days.

(g) If the FQHC fails to submit required documentation within five months of ((this deficiency notice)) the notice identified in (f) of this subsection, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. The agency may recoup any overpayment to the FQHC ((may be recouped by the agency)).

((6) **Appeals.** Appeals of agency action under this section are governed by WAC 182-502-0220, except that any rate change begins on the date the agency received the change in scope of services rate adjustment application.)

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-05-023, § 182-548-1500, filed 2/9/15, effective 3/12/15. WSR 11-14-075, recodified as § 182-548-1500, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, BIPA of 2000 Section 702, sections 201 and 209 of 2009-2011 budget bill, and 42 U.S.C. 1396a(bb). WSR 10-09-002, § 388-548-1500, filed 4/7/10, effective 5/8/10.]

NEW SECTION

WAC 182-548-1600 Federally qualified health centers—Appeals related to overpayments. An overpayment assessment by the agency against an FQHC identified in the annual managed care reconciliation (see WAC 182-548-1450) may be appealed based on WAC 182-502-0230 and RCW 41.05A.170. Administrative hearing appeals are governed by chapter 34.05 RCW (Administrative Procedure Act) and chapter 182-526 WAC (HCA administrative hearing rules).

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NEW SECTION

WAC 182-548-1650 Federally qualified health centers—Appeals related to rate setting. (1) An FQHC provider has a right to an administrative appeal of agency action related to rate setting under this chapter based on the rules in this section.

(a) The rules in WAC 182-502-0220 do not apply to appeals of agency action related to rate setting under this chapter.

(b) Appeals related to rate setting under this section are not governed by the Administrative Procedure Act, chapter 34.05 RCW.

(c) Any rate change that the agency grants that is the result of fraudulent practices on the part of the FQHC, including as described under RCW 74.09.210, is exempt from the appeal provisions in this chapter.

(d) An FQHC who fails to submit requested information as outlined in this chapter will be determined to have abandoned their appeal.

(2) The first level of appeal.

(a) An FQHC provider who wants to contest an agency action concerning the reimbursement rate must file a written appeal with the agency. Written appeals must be sent to the address provided in the rate notification letter.

(b) The FQHC must file the appeal within 60 calendar days of the date of the rate notification letter from the agency, unless an extension has been granted.

(i) The agency may grant a time extension for the appeal period if the FQHC makes such a request before the expiration of the 60-day period.

(ii) The agency does not consider an appeal filed after the 60-day period unless an extension is granted by the agency.

(c) The appeal must include the following:

(i) A statement of the specific issue being appealed;

(ii) Supporting documentation; and

(iii) A request for the agency to recalculate the rate.

(d) When an FQHC appeals a portion of a rate, the agency may review all components of the reimbursement rate.

(e) To complete a review of the appeal, the agency may do one or both of the following:

(i) Request additional information;

(ii) Conduct an audit of the documentation provided.

(f) The agency issues a decision or requests additional information within 60 calendar days of receiving the rate appeal request.

When the agency requests additional information:

(i) The FQHC has 45 calendar days from the date of the request to submit the additional information to the agency; and

(ii) The agency issues a decision within 30 calendar days of receipt of the additional information.

(g) Any rate increase or decrease resulting from an appeal is effective retroactively to the rate effective date in the notification letter. The exception is identified in (h) of this subsection.

(h) If an appeal is related to the denial of a change in scope rate adjustment application, any rate adjustment effective date is established by the following rules:

(i) For prospective change in scope, the effective date of the rate adjustment is established by WAC 182-548-1500 (2)(d);

(ii) For retrospective change in scope, the effective date of the rate adjustment is established by WAC 182-548-1500 (2)(e);

(iii) For a post change in scope of services, the effective date of the rate adjustment is established by WAC 182-548-1500 (5)(e).

(3) The second level of appeal.

(a) When an FQHC disagrees with a rate review decision from the first level of appeal, it may file a request along with supporting documentation for a dispute conference with the agency. For this section, "dispute conference" means an informal administrative appeal to resolve FQHC disagreements with an agency action not resolved at the first level of appeal.

(b) If an FQHC files a request for a dispute conference, it must submit the request to the agency within 30 calendar days after the date of the rate review decision.

(i) Any request for a dispute conference must be sent to the address indicated in the rate review decision.

(ii) The agency does not consider dispute conference requests submitted after the 30-day period for the first level decision.

(c) The agency conducts the dispute conference within 90 calendar days of receiving the request.

(d) The agency-director designee issues the final decision within 30 calendar days of the conference. Extensions of time for extenuating circumstances may be granted by the agency-director designee.

(e) Any rate increase or decrease resulting from a dispute conference decision is effective on the date specified in the dispute conference decision.

(f) The dispute conference is the final level of administrative appeal within the agency and precedes judicial action.

(4) The agency considers an FQHC who fails to attempt to resolve disputed rates as provided in this section has abandoned the dispute.

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OTS-4022.2

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter ((or)), the definitions found in chapter 182-500 WAC((, the definitions found in the Webster's New World Dictionary)) apply.

"APM index" - The agency uses the alternative payment methodology (APM) ((is used)) to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI).

"Base year" - The year that is used as the benchmark in measuring ((a clinic's)) an RHC's total reasonable costs for establishing base encounter rates.

"Cost center" - A category of service approved to be provided by the RHC under WAC 182-549-1200 and reported in the medicare cost report and supplemental documentation. The categories of services to be provided by the RHC may include medical and dental.

"Encounter" - A face-to-face or telemedicine (including audio-only telemedicine) visit between ((a client and a qualified RHC provider (e.g., a physician, dentist, physician's assistant, or advanced registered nurse practitioner))) an encounter-eligible client and an RHC provider who exercises independent judgment when providing services that qualify for ((an)) encounter rate reimbursement.

"Encounter-eligible client" - A client who receives benefits under Title XIX (medicaid) or Title XXI (CHIP).

"Encounter rate" - A cost-based, facility-specific rate for covered RHC services((, paid to a rural health clinic for each valid encounter it bills)).

"Enhancements (also called managed care enhancements or supplemental payments)" - A monthly amount ((paid by)) the agency pays to RHCs through a managed care organization (MCO) that has contracted with the RHC to provide services to clients enrolled with the MCO. The enhancement is in addition to the negotiated payment that RHCs receive from the MCO. RHCs participating in the payment method described in WAC 182-549-1450 ((+5))) (7)(b) do not receive enhancements.

"Fee-for-service" - A payment method the agency uses to pay providers for covered medical services provided to ((clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program, except those)) Washington apple health clients, which excludes services provided ((under)) by the agency's ((prepaid)) contracted managed care organizations ((or those)) and services that qualify for an encounter payment.

"Interim rate" - The rate ((established by)) the agency establishes to pay ((a rural health clinic)) an RHC for covered RHC services prior to the establishment of a permanent rate for that ((facility)) RHC.

"Medicare cost report" - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

"Medicare economic index (MEI)" - An index published in the Federal Register used in the calculation of changes to determine allowed charges for physician services. The agency adjusts RHC encounter rates and enhancement rates by the MEI each year on January 1st.

"Mobile unit" - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit" - The objects, equipment, and supplies necessary for the provision of the services furnished directly by the RHC are housed in a permanent structure.

"Rebasing" - The process of recalculating encounter rates using actual cost report data.

"Rural area" - An area that is not delineated as an urbanized area by the U.S. Census Bureau.

"Rural health clinic (RHC)" - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;
- Certified by medicare as an RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services" - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. Part 491.9.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-02-070, § 182-549-1100, filed 12/26/19, effective 1/26/20; WSR 18-10-058, § 182-549-1100, filed 4/27/18, effective 5/28/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 1 § 213(1)(11). WSR 17-22-070, § 182-549-1100, filed 10/27/17, effective 1/1/18. Statutory

Authority: RCW 41.05.021 and 41.05.160. WSR 15-11-008, § 182-549-1100, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-549-1100, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 U.S.C. 1396a(bb), 42 C.F.R. 405.2472, and 42 C.F.R. 491. WSR 10-09-030, § 388-549-1100, filed 4/13/10, effective 5/14/10. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 C.F.R. 405.2472, 42 C.F.R. 491. WSR 08-05-011, § 388-549-1100, filed 2/7/08, effective 3/9/08.]

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1200 Rural health clinics—Enrollment. (1) To participate in the Title XIX (medicaid) program or the Title XXI (CHIP) program and receive payment for services, a rural health clinic (RHC) must:

- (a) Receive RHC certification for participation in the Title XVIII (medicare) program according to 42 C.F.R. 491;
- (b) Sign a core provider agreement with the medicaid agency;
- (c) Comply with the clinical laboratory improvement amendments (CLIA) of 1988 testing for all laboratory sites per 42 C.F.R. Part 493; and
- (d) Operate in accordance with applicable federal, state, and local laws.

(2) An RHC may be a permanent or mobile unit. If an entity owns clinics in multiple locations, each individual site must be certified by the agency in order to receive reimbursement from the agency as an RHC.

(3) The agency uses one of two timeliness standards for determining the effective date of a medicaid-certified RHC.

(a) The agency uses medicare's effective date if the RHC returns a properly completed core provider agreement and a properly completed RHC enrollment packet within ((sixty)) 60 calendar days from the date of ((medicare's letter notifying the clinic)) CMS's written notification to the RHC of the medicare certification.

(b) The agency uses the date the medicare certification letter is received by the agency if the RHC returns either the properly completed core provider agreement ((and)) or properly completed RHC enrollment packet after ((sixty)) 60 calendar days of the date of medicare's letter notifying the clinic of the medicare certification.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-02-070, § 182-549-1200, filed 12/26/19, effective 1/26/20; WSR 15-11-008, § 182-549-1200, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-549-1200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 C.F.R. 405.2472, 42 C.F.R. 491. WSR 08-05-011, § 388-549-1200, filed 2/7/08, effective 3/9/08.]

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1300 Rural health clinics—Services. (1) Rural

health clinic (RHC) services are defined under 42 C.F.R. 440.20(b).

(2) The medicaid agency pays for RHC services when they are:

(a) Within the scope of ((a)) an encounter-eligible client's benefit package. See WAC 182-501-0060; and

(b) Medically necessary as defined in WAC 182-500-0070.

(3) RHC services may be provided by any of the following individuals in accordance with 42 C.F.R. 405.2401, 491.7, and 491.8:

(a) Physicians;

(b) Physician assistants (PA);

(c) Nurse practitioners (NP);

(d) Nurse midwives or other specialized nurse practitioners;

(e) Certified nurse midwives;

(f) Registered nurses (RN) or licensed practical nurses (LPN);

(g) Psychologists or clinical social workers; and

(h) Dental services specified in 42 C.F.R. Sec. 440.100.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-02-070, § 182-549-1300, filed 12/26/19, effective 1/26/20; WSR 15-11-008, § 182-549-1300, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-549-1300, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 C.F.R. 405.2472, 42 C.F.R. 491. WSR 08-05-011, § 388-549-1300, filed 2/7/08, effective 3/9/08.]

AMENDATORY SECTION (Amending WSR 20-24-083, filed 11/25/20, effective 1/1/21)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM are at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an RHC submits its first audited or as filed medicare cost report to the agency, the agency pays the RHC an average encounter rate of other similar RHCs within the state, otherwise known as an interim rate. Similar RHCs are defined as either all hospital based or all free-standing RHCs(($\frac{1}{2}$)).

(b) Upon ((submission of the RHC's first audited medicare cost report,)) the RHC's request to the agency, which must include the submission of the RHC's first as filed or audited medicare cost report, the agency calculates the RHC's PPS rates for RHC core services. The agency sets each RHC's encounter rates ((at one hundred)) by dividing

100 percent of ((its)) the RHC's costs ((as defined in the cost report)) divided by the total number of RHC encounters ((the RHC has provided during the time period covered in the audited)) reported in the submitted cost report. The encounter rate is effective on the date the agency receives the submitted medicare cost report from the RHC.

(c) RHCs receive this rate for the remainder of the calendar year during which the ((audited)) submitted medicare cost report became available to the agency. The agency then ((increases)) adjusts the encounter rate each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of ((one hundred)) 100 percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) The agency determines PPS base encounter rates ((are determined)) using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are ((increased)) adjusted by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculated RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM used the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates were increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result was the year 2009 APM rates for each RHC that chose to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency paid RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC had the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM used each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency recouped

from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM, known as APM-3, is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates are increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency periodically rebases the encounter rates using the RHC cost reports and other relevant data. Rebasing is done only for RHCs that are reimbursed under the APM.

(e) The agency makes sure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided beginning July 1, 2017, and ending December 31, 2022.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM, known as APM-4, is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each RHC. The PMPM rate ((will)) accounts for enhancement payments in accordance with the definition of enhancements in WAC 182-548-1100. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC.

(iv) The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

- (A) Quality and access metrics performance.
 - (B) RHC encounter rate changes.
- (v) In accordance with 42 U.S.C. 1396a (bb) (5) (A), the agency performs an annual reconciliation.
- (A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b) (iv) of this subsection.
- (B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b) (iv) of this subsection.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396a (bb) (5) (A). WSR 20-24-083, § 182-549-1400, filed 11/25/20, effective 1/1/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-02-070, § 182-549-1400, filed 12/26/19, effective 1/26/20; WSR 17-12-016, § 182-549-1400, filed 5/30/17, effective 7/1/17; WSR 15-11-008, § 182-549-1400, filed 5/7/15, effective 6/7/15. Statutory Authority: RCW 41.05.021. WSR 12-16-060, § 182-549-1400, filed 7/30/12, effective 8/30/12. WSR 11-14-075, recodified as § 182-549-1400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 U.S.C. 1396a(bb), 42 C.F.R. 405.2472, and 42 C.F.R. 491. WSR 10-09-030, § 388-549-1400, filed 4/13/10, effective 5/14/10. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 C.F.R. 405.2472, 42 C.F.R. 491. WSR 08-05-011, § 388-549-1400, filed 2/7/08, effective 3/9/08.]

AMENDATORY SECTION (Amending WSR 20-24-083, filed 11/25/20, effective 1/1/21)

WAC 182-549-1450 Rural health clinics—General payment information. (1) The medicaid agency ((pays for one encounter,)) limits RHC encounter rate reimbursement to one per client, per day except in the following circumstances:

- (a) ((The visits occur with different health care professionals with different specialties)) There is a subsequent visit due to the client suffering an illness or injury after the first visit that requires separate evaluation and treatment on the same day for unrelated diagnoses; or
- (b) There are separate visits ((with unrelated diagnoses)).
- (2) Rural health clinic (RHC) services and supplies incidental to the provider's services are included in the encounter rate payment.
- (3) The agency pays for non-RHC services provided in an RHC on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.
- (4) For clients enrolled with a managed care organization (MCO), that MCO pays for covered RHC services.
- (5)) in different types of cost centers that occur with different health care professionals. (For example, a client with a separate medical and dental visit on the same day.)
- (2) All services provided within the same cost center performed on the same day must be included in the same encounter, except for in the circumstances outlined in subsection (1) (a) of this section.
- (3) Services and supplies incidental to an encounter are included in the encounter rate payment and must be billed on the same claim.

(4) RHCs must provide services in a single encounter that are typically rendered in a single visit based on clinical guidance and standards of care.

(a) RHCs must not split services into multiple encounters unless there is clinical justification. (For example, fluoride treatment and sealants must be provided on the same day as an encounter-eligible service.)

(b) Clinical justification must be based on medical necessity and documented in the client's record.

(5) Services provided in an RHC that are not encounter-eligible are paid on a fee-for-service basis. These services are paid according to agency rules, billing guides and fee schedules.

(6) Managed care organization (MCO) contracted services provided in an RHC for clients enrolled in an MCO are paid for by the MCO.

(7) For clients enrolled with MCOs, the RHC receives ((an)) encounter rate reimbursement using either the method described in (a) or (b) of this subsection.

(a) RHCs receive an enhancement payment in addition to the MCO's negotiated payment. The agency makes enhancement payments in amounts necessary to ((make sure)) ensure that the RHC receives the full encounter rate to comply with 42 U.S.C. 1396a (bb) (5) (A).

(i) The RHCs receive a monthly enhancement payment for each managed care client assigned to them by an MCO.

(ii) To ((make sure)) ensure that the appropriate amounts are paid to each RHC ((receives the appropriate amounts)), the agency performs an annual reconciliation of the enhancement payments.

(A) For each RHC, the agency compares the amount paid in enhancement payments to the amount determined by the following formula:

((Managed care encounters times encounter rate) less actual MCO payments for RHC services.))

(Managed care encounters x encounter rate) - MCO payments for RHC services.

(B) If the agency determines that the RHC ((has been)) was overpaid, the agency recoups the appropriate amount. If the agency determines that the RHC ((has been)) was underpaid, the agency pays the difference.

(C) The agency may prospectively adjust the RHC's monthly enhancement payments if the agency determines the RHC has been overpaid or underpaid in the annual reconciliation.

(D) The agency uses the RHC's most current reconciliation data, and any supplemental information provided by the RHC to determine if any adjustment to the enhancement rate is necessary.

(E) If the agency determines a prospective adjustment to enhancement payments is necessary, the agency notifies the RHC in writing at least 30 calendar days prior to the enhancement payment adjustment.

(F) For dates of service on and after January 1, 2018, reconciliations are conducted in the calendar year following the calendar year for which the enhancements were paid. Reconciliations are conducted by the agency or the clinic with final review and approval by the agency. The process of settling over or under payments may extend beyond the calendar year in which the reconciliations were conducted.

(b) Effective January 1, 2018, instead of distributing monthly enhancement payments to the RHCs, MCOs pay the full encounter rate directly to participating clinics for encounter-eligible services.

(i) RHC participation ((in this option)) is voluntary. The RHC ((must notify)) notifies the agency in writing whether it will partic-

ipate or not by no later than November 1st prior to the year of participation.

(ii) The agency performs a reconciliation or claim review with the MCO as outlined in the MCO contract. Reconciliations or claim reviews make sure appropriate amounts are paid to each RHC and that MCOs are not put at risk for, or have any right to, the enhancement portion of the claim. If an MCO has been overpaid, the agency recoups the appropriate amount. If an MCO has been underpaid, the agency pays the difference.

(iii) RHCs participating in the revised alternative payment method (APM) as described in WAC 182-549-1400(8) are not eligible to receive encounter payments directly from MCOs under this section.

((6) Only those services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for services provided to clients in state-only medical programs.) (8) The agency pays the encounter rate and the enhancement payments with respect to services provided to encounter-eligible clients. Services provided to clients ((in state-only)) who are enrolled in medical programs that are paid only in state funds are not encounter-eligible; these claims are ((considered)) paid on a fee-for-service basis, regardless of the type of service performed.

[Statutory Authority: RCW 41.05.021, 41.05.160; 42 U.S.C. 1396a (bb) (5) (A). WSR 20-24-083, § 182-549-1450, filed 11/25/20, effective 1/1/21. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-02-070, § 182-549-1450, filed 12/26/19, effective 1/26/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 1 § 213(1)(11). WSR 17-22-070, § 182-549-1450, filed 10/27/17, effective 1/1/18. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-016, § 182-549-1450, filed 5/30/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 20-02-070, filed 12/26/19, effective 1/26/20)

WAC 182-549-1500 Rural health clinics—Change in scope of service rate adjustment. In accordance with 42 U.S.C. 1396a (bb) (3) (B), the agency adjusts its payment rate to a rural health clinic (RHC) to take into account any increase or decrease in the scope of the RHC's services. The procedures and requirements for any such rate adjustment are described below.

(1) **Triggering events.**

(a) An RHC may file a change in scope of services rate adjustment application with the agency on its own initiative only when((÷)) the RHC satisfies the criteria described in (a)(i), (ii), and (iii) of this subsection.

(i) When the cost to the RHC of providing covered health care services to eligible clients has increased or decreased due to one or more of the following triggering events:

(A) A change in the type of health care services the RHC provides;

(B) A change in the intensity of health care services the RHC provides. Intensity means the total quantity of labor and materials

consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the RHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the RHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or amount of services has decreased and the cost of an average encounter has decreased((~~;~~ and)).

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter(~~(; and)~~).

(iii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable under state and federal law.

(b) At any time, the agency may instruct the RHC to file a medicare cost report with a position statement ((~~eff~~)) indicating whether the RHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services ((~~the RHC "position statement"~~)).

(i) The RHC ((~~must~~)) files a completed cost report and position statement no later than ((~~ninety~~)) 90 calendar days after receiving the instruction from the agency to file an application;

(ii) The agency reviews the RHC's cost report and position statement under the same criteria listed above for an application for a change in scope adjustment;

(iii) The agency ((~~does~~)) will not request more than one change in scope in a calendar year.

(2) Filing requirements.

(a) The RHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

((~~i~~)) (b) Unless instructed to file an application by the agency, the RHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

((~~ii~~)) (c) The RHC ((~~must~~)) files for a change in scope of service rate adjustment ((~~no later than~~)) based on the following deadlines, whichever is later:

(i) Ninety calendar days after the end of the ((calendar year in which the RHC believes the change in scope occurred or in which)) RHC's fiscal year, demonstrating that the change in scope occurred.

(ii) Ninety calendar days after the RHC learned ((that)) the cost threshold in subsection (1)(a)(ii) of this section was met((, whichever is later)).

((~~b~~)) (d) Prospective change in scope.

(i) ((~~To file~~)) A prospective change in scope of service rate adjustment application((, the RHC must submit projected costs sufficient

~~to establish an interim rate. A prospective change is) states each triggering event listed in subsection (1)(a)(i) of this section that supports the RHC's application.~~

(ii) A prospective change in scope of service rate adjustment application must be based on one of the following:

(A) A change the RHC plans to implement in the future. The RHC submits 12 months of projected data and costs sufficient to establish an interim rate; or

(B) A change with less than 12 months of experience to support the change reflected in the medicare cost report. The RHC submits a combination of historical data and projected costs sufficient to establish an interim rate.

(iii) The interim rate adjustment goes into effect after the change takes effect.

((iii)) (iv) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

((iii)) (v) If the change in scope occurs ((fewer)) less than ((ninety)) 90 calendar days after the RHC submitted a complete application to the agency, the interim rate ((must)) takes effect no later than ((ninety)) 90 calendar days after the complete application was submitted to the agency.

((iv)) (vi) If the change in scope occurs more than ((ninety)) 90 calendar days but ((fewer)) less than ((one hundred eighty)) 180 calendar days after the RHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

((v)) (vii) If the RHC fails to implement a change in service identified in its prospective change in scope of service rate adjustment application within ((one hundred eighty)) 180 calendar days, the application is void and the RHC may resubmit the application to the agency, in ((which case)) such a circumstance, ((a)(i))) (b) of this subsection does not apply.

((e)) (viii) If the change in scope is based on a triggering event that already occurred but is supported by less than 12 months of data in the filed cost report, the interim rate takes effect on the date the RHC submitted the completed application to the agency.

(e) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application ((must)) states each ((qualifying)) triggering event listed in subsection (1)(a)(i) of this section that supports its application and include ((twelve)) 12 months of data documenting the cost change caused by the ((qualifying)) triggering event. A retrospective change in scope is a change that took place in the past and the RHC is seeking to adjust its rate based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the RHC ((filed the)) submitted a complete application ((with)) to the agency, as determined by the agency.

(3) Supporting documentation.

(a) To apply for a change in scope of service rate adjustment, the RHC ((must include)) submits the following supporting documentation ((in the application)) to the agency in electronic format by email to fghcrhc@hca.wa.gov:

(i) A narrative description of the proposed change in scope;

(ii) A description of each cost center on the cost report that was or will be affected by the change in scope;

(iii) The RHC's most recent audited financial statements, if audit is required by federal law;

(iv) The implementation date for the proposed change in scope; and

(v) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include ((a)) the projected medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit for the ((~~twelve month~~)) 12-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for ((~~twelve months or~~)) one of the following:

(i) The 12-month period following the implementation of the triggering event; or

(ii) The fiscal year following implementation of the proposed change in scope.

(4) Review of the application.

(a) Application processing.

(i) The agency reviews the application for completeness, accuracy, and compliance with program rules.

(ii) Within ((sixty)) 60 days of receiving the application, the agency notifies the RHC of any deficient documentation or requests any additional information that is necessary to process the application. If the RHC does not provide the agency with the documentation or information requested within 30 calendar days of the request, the agency may deny the application.

(iii) Within ((ninety)) 90 calendar days of receiving a complete application, including any additional documentation or information that the agency might request, the agency sends the RHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement if the rate change is implemented.

(iv) ((Failure to act within ninety days means that the change is considered denied by the agency and)) The RHC may appeal the decision on the application as provided for in ((subsection (6) of this section)) WAC 182-549-1650.

(b) Determining rate for change in scope.

(i) The agency sets an interim rate for prospective changes in scope by adjusting the RHC's existing rate by the projected average cost per encounter of any approved change. The agency reviews the costs to determine if they are reasonable, and sets a new interim rate based on the determined cost per encounter.

(ii) The agency sets an adjusted encounter rate for retrospective changes in scope by adjusting the RHC's existing rate by the documented average cost per encounter of the approved change. ((Projected costs per encounter may be used if there are insufficient historical data to establish the rate.)) The agency reviews the costs to determine whether they are reasonable, and sets a new rate based on the determined cost per encounter.

(c) If the RHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment approved by the agency modifies the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final responsibility and authority for making decisions related to changes in scope.

(5) Post change in scope of services rate adjustment review.

(a) If the approved change in scope ((application)) rate adjustment was based on a retrospective change in scope application (i.e., based on a year or more of actual encounter data), the agency may conduct a post change in scope rate adjustment review.

(b) If the approved change in scope ((application)) rate adjustment was based on a prospective change in scope application (i.e., less than a full year of actual encounter data), the RHC ((must)) submits the following information to the agency within ((eighteen)) 18 months of the effective date of the rate adjustment:

(i) Medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for ((twelve)) 12 consecutive months of experience following implementation of the change in scope; ((and))

(ii) A narrative description of the request;

(iii) A description of each cost center on the cost report that was affected by the change in scope;

(iv) The RHC's most recent audited financial statements, if audit is required by applicable law; and

(v) Any additional documentation requested by the agency.

(c) The agency conducts the post change in scope review within ((ninety)) 90 calendar days of receiving the cost report and encounter data from the RHC.

(d) If necessary, the agency adjusts the encounter rate within ((ninety)) 90 calendar days to make sure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review takes effect on the date the agency issues its adjustment. The new rate is prospective.

(f) If the RHC fails to submit the post change in scope cost report or related encounter data, the agency provides written notice to the clinic ((of the deficiency)) within ((thirty)) 30 calendar days.

(g) If the RHC fails to submit required documentation within five months of ((this deficiency)) the notice identified in (f) of this subsection, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. The agency may recoup any overpayment to the RHC.

((6) Appeals. Appeals of agency action under this section are governed by WAC 182-502-0220, except that any rate change begins on the date the agency received the change in scope of services rate adjustment application.)

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-02-070, § 182-549-1500, filed 12/26/19, effective 1/26/20; WSR 15-05-020, § 182-549-1500, filed 2/9/15, effective 3/12/15. WSR 11-14-075, recodified as § 182-549-1500, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 U.S.C. 1396a(bb), 42 C.F.R. 405.2472, and 42 C.F.R. 491. WSR 10-09-030, § 388-549-1500, filed 4/13/10, effective 5/14/10. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 42 C.F.R. 405.2472, 42 C.F.R. 491. WSR 08-05-011, § 388-549-1500, filed 2/7/08, effective 3/9/08.]

NEW SECTION

WAC 182-549-1600 Rural health clinics—Appeals related to overpayments. An overpayment assessment by the agency against an RHC that was identified in the annual managed care reconciliation (see WAC 182-549-1450) may be appealed based on WAC 182-502-0230 and RCW 41.05A.170. Administrative hearing appeals are governed by chapter 34.05 RCW (Administrative Procedure Act) and chapter 182-526 WAC (HCA administrative hearing rules).

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NEW SECTION

WAC 182-549-1650 Rural health clinics—Appeals related to rate setting. (1) An RHC provider has a right to an administrative appeal of agency action related to rate setting under this chapter based on the rules in this section.

(a) The rules in WAC 182-502-0220 do not apply to appeals of agency action related to rate setting under this chapter.

(b) Appeals related to rate setting under this section are not governed by the Administrative Procedure Act, chapter 34.05 RCW.

(c) Any rate change that the agency grants that is the result of fraudulent practices on the part of the RHC, including as described under RCW 74.09.210, is exempt from the appeal provisions in this chapter.

(d) An RHC who fails to submit requested information as outlined in this chapter will be determined to have abandoned their appeal.

(2) The first level of appeal.

(a) An RHC provider who wants to contest an agency action concerning the reimbursement rate must file a written appeal with the agency. Written appeals must be sent to the address provided in the rate notification letter.

(b) The RHC must file the appeal within 60 calendar days of the date of the rate notification letter from the agency, unless an extension has been granted.

(i) The agency may grant a time extension for the appeal period if the RHC makes such a request before the expiration of the 60-day period.

(ii) The agency does not consider an appeal filed after the 60-day period unless an extension is granted by the agency.

(c) The appeal must include the following:

(i) A statement of the specific issue being appealed;

(ii) Supporting documentation; and

(iii) A request for the agency to recalculate the rate.

(d) When an RHC appeals a portion of a rate, the agency may review all components of the reimbursement rate.

(e) To complete a review of the appeal, the agency may do one or both of the following:

(i) Request additional information;

(ii) Conduct an audit of the documentation provided.

(f) The agency issues a decision or requests additional information within 60 calendar days of receiving the rate appeal request. When the agency requests additional information:

- (i) The RHC has 45 calendar days from the date of the request to submit the additional information to the agency; and
- (ii) The agency issues a decision within 30 calendar days of receipt of the additional information.

(g) Any rate increase or decrease resulting from an appeal is effective retroactively to the rate effective date in the notification letter. The exception is identified in (h) of this subsection.

(h) If an appeal is related to the denial of a change in scope rate adjustment application, any rate adjustment effective date is established by the following rules:

- (i) For prospective change in scope, the effective date of the rate adjustment is established by WAC 182-549-1500 (2)(d);
- (ii) For retrospective change in scope, the effective date of the rate adjustment is established by WAC 182-549-1500 (2)(e);
- (iii) For a post change in scope of services, the effective date of the rate adjustment is established by 182-549-1500 (5)(e).

(3) The second level of appeal.

(a) When an RHC disagrees with a rate review decision from the first level of appeal, it may file a request along with supporting documentation for a dispute conference with the agency. For this section "dispute conference" means an informal administrative appeal to resolve RHC disagreements with an agency action not resolved at the first level of appeal.

(b) If an RHC files a request for a dispute conference, it must submit the request to the agency within 30 calendar days after the date of the rate review decision.

(i) Any request for a dispute conference must be sent to the address indicated in the rate review decision.

(ii) The agency does not consider dispute conference requests submitted after the 30-day period for the first level decision.

(c) The agency conducts the dispute conference within 90 calendar days of receiving the request.

(d) The agency-director designee issues the final decision within 30 calendar days of the conference. Extensions of time for extenuating circumstances may be granted by the agency-director designee.

(e) Any rate increase or decrease resulting from a dispute conference decision is effective on the date specified in the dispute conference decision.

(f) The dispute conference is the final level of administrative appeal within the agency and precedes judicial action.

(4) The agency considers an RHC who fails to attempt to resolve disputed rates as provided in this section has abandoned the dispute.

[]

WSR 22-18-102

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 7, 2022, 10:50 a.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [22-19](#) issue of the Register.

WSR 22-18-103

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 21-12—Filed September 7, 2022, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-078.

Title of Rule and Other Identifying Information: Ecology is revising two rules:

Chapter 173-423 WAC, Clean vehicles program.

- This rule making will adopt California's Advanced Clean Cars II (ACC II) rule, which will ramp up sales of zero emission vehicles (ZEVs) in Washington state starting in model year 2026. It will also adopt California's heavy-duty engine and vehicle omnibus rules, establish a credit system for ZEV sales, and institute a one-time fleet reporting requirement.

Chapter 173-400 WAC, General regulations for air pollution sources.

- This rule making will update the adoption date of federal rules by amending the following sections:
 - WAC 173-400-025 Adoption by reference.
 - WAC 173-400-050 Emission standards for combustion and incineration units.
 - WAC 173-400-070 Emission standards for certain source categories.
 - WAC 173-400-115 Standards of performance for new sources.
 - WAC 173-400-720 Prevention of significant deterioration (PSD). The rule will retain the current definition of "project emissions accounting."

Hearing Location(s): On October 12, 2022, at 1:00 p.m. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. We will be holding a presentation and question and answer session, followed by the hearing. Register in advance for this meeting <https://waecy-wa.gov.zoom.us/meeting/register/tZ0vduCgrzwiEtT05IjMLM1MLUn39OphEVjQ>.

Date of Intended Adoption: December 19, 2022.

Submit Written Comments to: Adam Saul, send US mail to Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, email adam.saul@ecy.wa.gov, by October 19, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email ecyadacoordinator@ecy.wa.gov, visit <https://ecology.wa.gov/accessibility> for more information, by October 7, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 70A.30.010 directs ecology to adopt rules implementing California's vehicle emission standards and to maintain consistency with new iterations of California's standards and 42 U.S.C. Section 7507.

This rule making will adopt the following rules from California's Code of Regulations and update chapter 173-423 WAC to reflect the new adoption date of California's rules:

- Heavy-duty engine and vehicle omnibus regulation and associated amendments. These rules require cleaner, less-polluting heavy-du-

- engines that emit much lower quantities of nitrogen oxide (NOx) and particulate matter (PM).
- Advanced Clean Cars II (ACC II). This rule will increase the zero emission vehicle (ZEV) sales of passenger cars, light-duty trucks and medium-duty vehicles in Washington state. The sales mandate would take effect in model year 2026 and begin by requiring 35 percent of new passenger vehicle sales to be ZEV, with that percentage increasing between six to eight percent per year until ZEVs make up 100 percent of new sales starting in model year 2035. It will also require light- and medium-duty vehicles to meet stronger emissions standards.

This rule making will also include the following:

- Early action ZEV credits: Adopt provisions to provide automakers with optional ZEV sales credits for model years 2023 and 2024. This would ensure Washingtonians have access to a wide variety of ZEV vehicle models before regulatory requirements take effect in model year 2025.
- One-time fleet reporting rule: Require fleet owners and operators to report information about medium- and heavy-duty vehicles (defined as vehicles above 8,500 pounds) in their fleet. This requirement mirrors a similar requirement in California's advanced clean trucks rule. Ecology currently has very little data on fleets, and the inventory of existing heavy-duty fleets and information about where these vehicles operate would enable ecology to develop and implement strategies to reduce their emissions.

Chapter 173-400 WAC, General air quality regulations for air pollution sources:

The rule making will update the adoption date of federal rules. Ecology can only implement and enforce federal rules that the rule adopts by reference. This action will amend WAC 173-400-025 Adoption by reference, 173-400-050 Emission standards for combustion and incineration units, 173-400-070 Emission standards for certain source categories, 173-400-115 Standards of performance for new sources, and 173-400-720 Prevention of significant deterioration (PSD). The rule will retain the current definition of "project emissions accounting."

Reasons Supporting Proposal: Vehicle emissions are the biggest source of carbon pollution in Washington, accounting for about 45 percent of total greenhouse gas emissions in our state. Most of that pollution comes from passenger cars and trucks. We cannot make meaningful progress to address climate change without significantly reducing vehicle emissions.

This rule making will rapidly scale up ZEVs as a proportion of new vehicle sales, take polluting engines off the road, and mitigate the climate impacts of tailpipe emissions. Along with cutting greenhouse gases, reducing emissions from vehicles will improve air quality and protect public health, especially in communities nearby transportation corridors, ports, freeways, and other areas of concentrated emissions. Because more low-income people and people of color live in these communities, they are disproportionately harmed by vehicle emissions.

The new heavy-duty truck engine standards will reduce pollution and health risks by cutting emissions of NOx by 90 percent and PM by 50 percent. Exposure to these pollutants is linked to serious health problems, including asthma, lung, and heart disease. The rule changes

also add other requirements that reduce emissions and extend engine warranties and useful life.

Statutory Authority for Adoption: Chapter 70A.30 RCW, Motor vehicle emission standards; and chapter 70A.15 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70A.30 RCW, Motor vehicle emission standards; and chapter 70A.15 RCW, Washington Clean Air Act.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: More information is available in the preliminary regulatory analysis and the determination of nonsignificance and environmental checklist prepared to comply with the State Environmental Policy Act (SEPA). Refer to the rule making web page for a link to these documents <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-423-400Jan18>.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Saul, Lacey, 360-742-7998; Implementation and Enforcement: Dustin Watson, Lacey, 360-764-6785.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Adam Saul, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-742-7998, Washington relay service or TTY call 711 or 877-833-6341, email adam.saul@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW [no information supplied by agency].

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Ecology baselines are typically complex, consisting of multiple requirements fully or partially specified by existing rules, statutes, or federal laws. Where the proposed rule differs from this baseline of existing requirements, it is typically subject to (i.e., not exempt from) analysis required under the Regulatory Fairness Act (chapter 19.85 RCW) (RFA). Where the proposed rule is identical to baseline (dictated by existing rule, statute, or federal law), it is exempt from analysis.

See the small business economic impact statement (SBEIS) below for a summary of the baseline for this rule making, and whether or how the proposed rule differs from the baseline. Additional exemptions under RFA are identified if applicable.

The proposed rule does impose more-than-minor costs on businesses.

SBEIS

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is exempted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document (Ecology publication no. 22-02-030, September 2022).

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: Baseline:

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- RCW 70A.30.010: Adopts California's vehicle emission standards and directs ecology to adopt rules implementing them, and to amend the rules to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Section 7507.
- Section 177 of the Clean Air Act (42 U.S.C. §7507): Authorizes other states to choose to adopt California's standards instead of federal requirements.
- Chapter 70A.15 RCW, Washington Clean Air Act.
- The existing rules:
 - Chapter 173-423 WAC, Clean vehicles program.
 - Chapter 173-400 WAC, General air quality regulations for air pollution sources: Establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting federal air quality standards.

Adopt California's heavy-duty engine and vehicle omnibus regulation and associated amendments: Baseline: RCW 70A.30.010 directs ecology to adopt rules implementing California's vehicle emission stand-

ards and to amend the rule to maintain consistency with the California motor vehicle emission standards and 42 U.S.C. Section 7507.

Proposed: The proposed amendments would adopt by reference sections of the California Code of Regulations, which require drastically cutting smog-forming NOx from conventional heavy-duty engines. The omnibus regulation would significantly increase the stringency of NOx emissions standards and would lengthen the useful life and emissions warranty of heavy-duty diesel engines for use in vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds. The more stringent NOx emission standards begin with the 2024 model year engines and become more stringent with 2027 and subsequent model year engines.

Expected Impact: Ecology is required by statute to adopt California's vehicle emission standards and to amend the rule from time to time to maintain consistency with the California motor vehicle emission standards; therefore, we do not expect any costs or benefits associated with this change as compared to the baseline.

California's rule includes a provisional exemption for transit buses. Washington state does not have specific regulations for transit buses like California and will not adopt such regulations in this year's rule making. This gives ecology time to review California's innovative clean transit rule.

Relevant Exemptions: RCW 19.85.025(3), 34.05.310 (4)(e), 34.05.310 (4)(c).

Adopt California's Advanced Clean Cars II Rule: Baseline: In 2020, the legislature adopted the California rules as written, and directed ecology to adopt rules implementing them (RCW 70A.30.010). In November 2021, ecology amended chapter 173-423 WAC, Clean vehicles program, to incorporate the California Advanced Clean Cars I (ACC I) program. This program combines the control of criteria pollutants, other pollutants, and greenhouse gas emissions into a coordinated regulatory package. The rule adopts California's motor vehicle emission standards that apply to:

- Low emission vehicles - passenger cars, light-duty trucks, and medium-duty vehicles (trucks, SUVs, and vans).
- Zero emission vehicles - passenger cars, light-duty trucks, and medium-duty vehicles (trucks, SUVs, and vans).
- Zero emission trucks - vehicles greater than 8,500 pounds GVWR (delivery vans, work trucks, long-haul trucks, drayage trucks, transit buses, garbage trucks, and other commercial work vehicles). This is California's Advanced Clean Trucks rule.

Proposed: Ecology is proposing to adopt the ACC II program after California's adoption of the program on August 25, 2022. The newly proposed CARB amendments would set ZEV and LEV requirements for model year 2026 and subsequent model year vehicles, including new supporting ZEV and LEV test procedures. It would also establish ZEV assurance measures, which include new requirements for:

- Durability.
- Warranty.
- Serviceability.
- Data standardization.
- Battery labeling.

These rules are intended to ensure ZEVs are able to serve as true replacements to conventional internal combustion engine vehicles (ICEVs), thereby ensuring emissions reductions occur and providing

consumer confidence needed to support the full entry of ZEVs into new and used vehicle markets.

Expected Impact: Ecology is required by statute to adopt California's vehicle emission standards and to amend the rule from time to time to maintain consistency with the California motor vehicle emission standards; therefore, we do not expect any costs or benefits associated with this change as compared to the baseline.

Relevant Exemptions: RCW 19.85.025(3), 34.05.310 (4)(e), 34.05.310 (4)(c).

Allow automakers to earn credits for model years 2023 and 2024:

Baseline: In November 2021, ecology adopted the California ZEV requirement into chapter 173-423 WAC to require automakers delivering new, light-duty vehicles for sale in Washington state to make a certain percentage of those vehicles ZEVs. ZEVs can include:

- Battery electric vehicles (BEV),
- Plug-in hybrid electric vehicles (PHEV), or
- Hydrogen fuel cell electric vehicles (FCEV).

When ecology adopted the rule, we opted to defer consideration of issuing proportional or early action credits (for selling ZEVs in the state before the rules take effect), due to existing robust sales of ZEVs in the state.

Proposed: The proposed rule amendments would provide an option for automakers to earn early action credits for ZEV sales for model years 2023 and 2024.

An early action credit is an optional credit for a ZEV sale before the ZEV compliance period starts in model year 2025. For model year 2025, earned credits would be regulatory credits under ACC I. Both early action and regulatory credits will be allocated based on the performance of the ZEV being sold. For example, long-range BEVs are eligible for the maximum of four credits, whereas some PHEVs with limited range can receive as little as a fraction of one credit.

Starting in model year 2026, ZEVs will receive a maximum of one credit per sale. All credits banked under the previous rules will be converted to historical credits. Ecology considered multiple options on how to assign credits and, seeking public input, presented the revised early credit options report to the stakeholders.

Ecology considered the following options:

- Option 1. Full proportional credits: Washington credits are proportional to banked California credits.
- Option 2. Adjusted proportional credits: Washington credits are proportional to banked California credits but adjusted for robust Washington sales.
- Option 3. No credits.
- Option 4. Credits for model year 2023 and model year 2024.
- Option 5. Combination: A mix of proportional credits and early action credits.

After reviewing and considering input received during the informal comment period, ecology concluded that the stakeholders recognize Option 4 - Credits for model year 2023 and 2024 - as the most beneficial. This option would provide early action - a credit for a ZEV sale before the ZEV compliance period starts with model year 2025.

Expected Impact: The amended rule would provide benefits to EV automakers with sales in Washington, and to all Washingtonians. Offering early action credits provides a new incentive to automakers to make EV models available in Washington state for the two years before

the start of our clean vehicles program. Without the ability to generate credits during this period, some automakers may choose to send EVs to states that offer credits to meet compliance obligations. Some automakers do not currently offer certain ZEV models for purchase in Washington due to the lack of ZEV credits, and will likely continue to keep those models off the Washington market until credits are available. Without early action credits, Washingtonians may continue to be unable to purchase some popular ZEV models in Washington.

Relevant Exemptions: None. Analysis required, but as discussed above no associated compliance costs.

Update the adoption date of California's rules: Baseline: The current rule incorporates California Code of Regulations as they existed on June 22, 2021, or the adoption by reference date: September 7, 2022, whichever is later.

Proposed: The amended rule would incorporate California Code of Regulations, as they exist on September 7, 2022, or the adoption by reference date, whichever is later.

Expected Impact: This change would allow ecology to meet requirements in RCW 70A.30.010 and would not generate any costs or benefits as compared to the baseline.

Relevant Exemptions: RCW 19.85.025(3), 34.05.310 (4) (c).

Require fleet owners and operators to report: Baseline: Currently, no entities are required to report to ecology information about vehicles over 8,500 pounds.

Proposed: The following entities would be required to report fleet information to ecology:

- Any person that owns or operates a business with gross annual revenues greater than \$50 million in the United States for the 2022 tax year, including revenues from all subsidiaries, subdivisions, or branches, and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds as GVWR operated in Washington in 2022.
- Any person that owns or operates a facility in Washington and, in the 2022 calendar year, owned or operated five or more vehicles with a GVWR greater than 8,500 pounds.
- Any person that operated a facility in Washington and in the 2022 calendar year, dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.
- Any Washington government agency, including state and local government, that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.
- Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

Expected Impact: We expect fleet reporting to impose costs on fleet owners and operators associated with the time necessary to report information about vehicles over 8,500 pounds. We also expect benefits from the proposed requirement, as the inventory of the existing heavy-duty fleet and information on where these vehicles operate would provide information to help ecology to develop a statewide strategy to reduce their emissions and assist with outreach for environmental justice advocates. Ecology currently has very little data on medium- and heavy-duty vehicle fleets. This data collection effort will help ecology identify preliminary opportunities for efficiently reducing emissions and at the same time not to overimpose requirements that would create excess or unreasonable costs, and cause unexpected side ef-

fects. This would also accelerate ZEV adoption and site ZEV infrastructure such as heavy-duty chargers.

Relevant Exemptions: None.

Organization and clarification without material impact: Baseline:

Over the course of implementation, ecology determined that some parts of the rules were unclear or poorly organized.

Proposed: The proposed rule amendments clarify and organize language and requirements to improve clarity and facilitate compliance. Other changes are necessary to make rules consistent across amended sections.

Expected Impact: No behavioral impact is expected, although the clarification of, and ease of compliance with, the proposed rule may reduce transitory costs (increased benefits) such as time spent determining whether or how to comply.

Relevant Exemptions: RCW 19.85.025(3), 34.05.310 (4)(d).

COSTS OF COMPLIANCE: EQUIPMENT: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

COSTS OF COMPLIANCE: SUPPLIES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR: We identified 2,226 entities that would be required to report under the proposed rule.

Summary of the number of entities we assume the proposed requirement would impact:

Reporting category	Number of entities
Businesses with gross annual revenues greater than \$50 million and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds GVWR operated in Washington in 2022.	35
Washington businesses in 2021 that owned and operated five or more vehicles with a GVWR greater than 8,500 pounds.	1,347
Out-of-state businesses in 2021 that operated five or more vehicles with a GVWR greater than 8,500 pounds in Washington.	108
Businesses in the 2022 calendar year that dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.	395
Government agencies, excluding state agencies, which operate five or more vehicles over 8,500 pounds GVWR in Washington in 2022.	320
Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.	19
State fleet data reporting agencies.	2
Total	2,226

Cost of reporting for one entity: In 2019, CARB published the Standardized Regulatory Impact Assessment (SRIA) for the advanced clean trucks (ACT) regulation. Under the ACT regulation, large fleet owners and large companies that contract out for transportation-related services are required to report the following information to CARB:

- A list of the vehicles they own.
- Location information for their companies in California.
- How they and their contractors move freight and perform other services.

Companies that do not own trucks need to report summary information about the:

- Types of product they move.
- Types of services they hire.

Most large companies that own trucks or buses have fleet software or other data management systems to pull information about their fleet and business quickly.

The proposed rule would require all covered parties to report fleet information.

The proposed rule also requires businesses to keep their reporting records for five years after the reporting deadline.

Affected entities would need time to prepare and submit their report. CARB estimated it takes on average:

- Two hours to retrieve, review, and report company-specific information.
- Two hours to retrieve, review, and report vehicle information.

This means businesses will need four hours to prepare and submit their report to ecology. This may be higher or lower from company to company. These averages assume that some large entities will not have information to report other than to respond that they do not contract directly for any transportation services. We assumed the hourly cost is \$50 per hour for staffing and lost revenue from the employee assigned to do the reporting.

The cost of reporting in the California rule is about \$200. Because California's reporting requirements and the mean hourly wage for transportation industry are similar to Washington, we conclude the cost of reporting, under the proposed rule, is also close to \$200. To be conservative, we also include a high-end estimate of eight hours (\$400) that an entity may need to report. This is a one-time requirement that will provide information to help ecology and other organizations develop a strategy for reducing emissions from medium- and heavy-duty vehicles.

We estimated the total cost range for all entities affected by the proposed change is between \$445,200 and \$890,400.

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

COSTS OF COMPLIANCE: OTHER: Not applicable.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule, based on the costs estimated in the preliminary regulatory analyses for this rule making. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule employs approximately six people. The largest 10 percent of affected businesses employ an average of 5,925 people. Based on cost estimates, we estimated the following compliance costs per employee:

Type of cost (or total cost)	Low	High
Average small business employment	6	6
Average employment at largest 10 percent of businesses	5,925	5,925
Small business cost per employee	\$33	\$66
Largest business cost per employee	\$0.03	\$0.07

We conclude that the proposed rule may have disproportionate impacts on small businesses, and therefore ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

Note that for California's rule the \$200 estimate is based on large fleets (50 vehicles or more), as the rule only affects those entities. As the proposed reporting requirements would affect entities with fleets of five and more vehicles, we expect the base cost for small businesses to be lower, because they generally have smaller fleets to report.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule significantly affects the prices of the goods they sell. The degree to which this could happen is strongly related to:

- Each businesses' production and pricing model (whether additional lump-sum costs would significantly affect marginal costs).
- Specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices.
- The relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for:

- Interindustry impacts.
- Price, wage, and population changes.
- Dynamic adjustment of all economic variables over time.

Using the REMI E3+ model, we applied potential costs (averaging them to \$670,000 and dividing them equally between years 2022 and 2023) to the following industries:

- Truck transportation.
- Couriers and messengers.
- Transit and ground passenger transportation.
- Scenic and sightseeing transportation and support activities for transportation.
- Warehousing and storage.

Modeling results did not indicate significant impacts to industries. However, output would decrease by \$251,213 in year 2022 and \$318,310 in 2023 over all industries in the state. Although the results for affected industries did show some effect on output, and therefore revenue of the industries, the relative indicators of industries demonstrate very little impact.

Effects of the reporting requirement costs on output, USD, 2022-2023:

Industry	2022 Output	Percent	2023 Output	Percent
Truck transportation	-45,170	-0.001	-54,989	-0.001
Couriers and messengers	-14,936	-0.001	-17,958	-0.001
Transit and ground passenger transportation	-5,997	0	-8,056	-0.001
Scenic and sightseeing transportation and support activities for transportation	-34,379	-0.001	-42,360	-0.001
Warehousing and storage	-11,714	-0.001	-13,983	-0.001
Transportation and warehousing total	-113,712	0	-139,258	-0.001

Industry	2022 Output	Percent	2023 Output	Percent
State economy total	-251,213	0	-318,310	0

MITIGATION OF DISPROPORTIONATE IMPACT: RFA (RCW 19.85.030(2)) states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see preliminary regulatory analyses), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.
- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

The scope of this rule making was limited to adopting California's ACC II program and establishing fleet reporting requirements, so we could not legally include options (a) and (c) - (f).

Finally, we included the following elements in the proposed rule amendments to reduce costs to small businesses.

We simplified, reduced, and eliminated reporting requirements, such as we rejected proposing the following requirements:

- The fleet reporting requirement should be annual instead of one-time.

See preliminary regulatory analyses for the details.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in their development of the proposed rule amendments:

- Ecology held three webinars for stakeholders concerning the proposed rule amendments on February 28, April 19, and June 14, 2022.
- The following stakeholders attended the webinars: Snohomish PUD, City of Seattle, Puget Sound Clean Air Agency, Cowlitz PUD, and NW Seaport Alliance.
- Stakeholder meeting notices, materials, and project updates sent to groups above and posted to rule-making website.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule amendments likely impact the following industries, with associated NAICS codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/naics/?58967?yearbck=2022>.

Long-haul freight transport companies, 484121
 Local freight transport companies, 484110
 Shipping and delivery companies, 492110
 Drayage truck dispatchers, 488510
 Logging companies, 113000
 Hazardous materials transport companies, 562112
 Fuel distributors, 424720
 Specialized freight haulers, 484220
 Construction and mining companies with HD fleets, 53241
 Transport logistics operators, 488510
 HVAC and plumbing contractors, 238220
 Distribution fleets for retail companies, 425120
 Distribution fleets for retail products, 424490
 Restaurant food distribution fleets, 423850
 Motor vehicle transport companies, 488490
 Truck rental companies, 532120
 Motor coach operators, 485113
 Electrical utility repair fleets, 237130
 Other utility repair fleets, 561990
 Federal agencies with HD fleets in WA, 999000
 US Postal Service, 491
 State agencies with HD fleets, 999200
 School districts and pupil transporters, 485410
 Local agencies with HD fleets, 999300

IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state.

Industry	Initial jobs impact	Jobs impact in 20 years
Whole state	-1.8	-0.015
Truck transportation	-0.274	0.001
Couriers and messengers	-0.324	0
Transit and ground passenger transportation	-0.187	0
Scenic and sightseeing transportation and support activities for transportation	-0.171	0
Warehousing and storage	-0.129	0
Transportation and warehousing total	-1.089	0

A copy of the statement may be obtained by contacting Adam Saul, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-742-7998, Washington relay service or TTY call 711 or 877-833-6341, email adam.saul@ecy.wa.gov.

September 7, 2022
 Heather R. Bartlett
 Deputy Director

OTS-4006.1

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-400-025 Adoption by reference. (1) Adoption by reference date: ~~(December 23, 2020)~~ August 24, 2022.

(2) Federal rules mentioned in this rule are adopted as they exist on the date in subsection (1) of this section. Adoption by reference means the federal rule applies as if it was copied into this rule.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-400-025, filed 11/29/21, effective 12/30/21. Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-025, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-025, filed 5/31/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting waste wood for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by 40 C.F.R. Part 60, Appendix A, Test Method 5 (in effect on the date in WAC 173-400-025) or approved procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, Subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, Subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by Source Test Method 14 procedures in *Source Test Manual - Procedures for Compliance Testing*,

state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. A commercial and industrial solid waste incineration unit that commenced construction on or before November 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025).

Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this ((section)) subsection is ((based on)) a federal requirement((s)).

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC

173-400-025) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, Subpart Ea or Subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), Subparts Ea, Eb, and AAAA, and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste, as defined in 40 C.F.R. 60.2265.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste, as these terms are defined in 40 C.F.R. 60.2265.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns.* Kilns regulated under 40 C.F.R. Part 63, Subpart LLL (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 C.F.R. Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units*. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;
- Waste management plan requirements in 60.2620 through 60.2630;
- Operator training and qualification requirements in 60.2635 through 60.2665;
- Emission limitations and operating limits in 60.2670 through 60.2685;
- Performance testing requirements in 60.2690 through 60.2725;
- Initial compliance requirements in 60.2700 through 60.2725;
- Continuous compliance requirements in 60.2710 through 60.2725;
- Monitoring requirements in 60.2730 through 60.2735;
- Recordkeeping and reporting requirements in 60.2740 through 60.2800;
- Title V operating permits requirements in 60.2805;
- Air curtain incinerator requirements in 60.2810 through 60.2870;
- Definitions in 60.2875; and
- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. A small municipal waste combustion unit constructed on or before August 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart JJJ (in effect on the date in WAC 173-400-025).

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) Small municipal waste combustion units that combust less than 11 tons per day. Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17) (C) of the Federal Power Act (16 U.S.C. 796 (17) (C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18) (C) of the Federal Power Act (16 U.S.C. 796 (18) (C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) *Exceptions.*

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) *Class I units.* Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) *Class II units.* Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) *Compliance option 1.*

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005, for all Class II units, and by November 6, 2005, for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, Subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, Subpart HHH (in effect on the date in WAC 173-400-025).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-050, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-050, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-050, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-050, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-050, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-050, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner

may operate until midnight December 31, 2019, provided it complies with the following:

(a) All wigwam and silo burners designed to dispose of waste wood must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4), 173-400-115, or 40 C.F.R. Part 62, Subpart III in effect on the date in WAC 173-400-025 as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) Hog fuel boilers.

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) Orchard heating.

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(c) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate an orchard-heating device that causes a visible emission exceeding twenty percent opacity as specified in WAC 173-400-040(2).

(4) **Grain elevators.** Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) Other waste wood burners.

(a) Waste wood burners not specifically provided for in this section shall meet all applicable provisions of:

(i) WAC 173-400-040 and 173-400-050;

(ii) 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025); and

(iii) 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025).

(b) Such waste wood burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(6) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill that commenced construction prior to May 30, 1991, and has not been modified or reconstructed since May 30, 1991, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025). A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submission of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b)(2)(v).

(7) Municipal solid waste landfills that commenced construction on or before July 17, 2014, and have not been modified or reconstructed since July 17, 2014. A municipal solid waste landfill that commenced construction on or before July 17, 2014, and has not been modified or reconstructed since July 17, 2014, must comply with the requirements in 40 C.F.R. Part 62, Subpart OOO (in effect on the date in WAC 173-400-025).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-070, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-070, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-070, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-070, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-070, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-070, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-070, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-070, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-070, filed 9/13/96, effective 10/14/96; WSR 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-115 Standards of performance for new sources. NSPS.

Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) Adoption of federal rules.

(a) 40 C.F.R. Part 60 and Appendices (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b) of this subsection.

(b) Exceptions to adopting 40 C.F.R. Part 60.

(i) The term "administrator" in 40 C.F.R. Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 C.F.R. Part 60 are not adopted:

(A) 40 C.F.R. 60.5 (determination of construction or modification);

(B) 40 C.F.R. 60.6 (review of plans);

(C) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, Cf, BBBB, DDDD, FFFF, MMMM, ((UUU)) and UUUa (emission guidelines); and

(D) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

Note: Refer to WAC 173-400-050 and 173-400-070 for adoption of federal rules that implement emission guidelines.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 C.F.R. Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-115, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-115, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-115, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-115, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-115, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-115, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-115, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.785. WSR 98-22-019 (Order 98-02), § 173-400-115, filed 10/23/98, effective 11/23/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-115, filed 9/13/96, effective 10/14/96; WSR 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; WSR 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and

70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-115, filed 4/15/83; WSR 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-720 Prevention of significant deterioration (PSD).

(1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (1) through (4);

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-200;

(iv) WAC 173-400-205;

(v) Allowable emission limits established under WAC 173-400-081 must also meet the criteria of 40 C.F.R. 52.21 (k)(1) and 52.21 (p)(1) through (4) (in effect on the date in WAC 173-400-025); and

(vi) The following subparts of 40 C.F.R. 52.21 (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b)(i), (ii), (iii), and (iv) of this subsection:

Section	Title
40 C.F.R. 52.21 (a)(2)	Applicability Procedures.
40 C.F.R. 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 C.F.R. 52.21 (c)	Ambient air increments.
40 C.F.R. 52.21 (d)	Ambient air ceilings.
40 C.F.R. 52.21 (h)	Stack heights.
40 C.F.R. 52.21 (i)	Review of major stationary sources and major modifications - Source applicability and exemptions.
40 C.F.R. 52.21 (j)	Control technology review.

Section	Title
40 C.F.R. 52.21 (k)	Source impact analysis.
40 C.F.R. 52.21 (l)	Air quality models.
40 C.F.R. 52.21 (m)	Air quality analysis.
40 C.F.R. 52.21 (n)	Source information.
40 C.F.R. 52.21 (o)	Additional impact analysis.
40 C.F.R. 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - Additional requirements
40 C.F.R. 52.21 (r)	Source obligation.
40 C.F.R. 52.21 (v)	Innovative control technology.
40 C.F.R. 52.21 (w)	Permit rescission.
40 C.F.R. 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 C.F.R. 52.21 by reference.

(i) Every use of the word "administrator" in 40 C.F.R. 52.21 means ecology except for the following:

(A) In 40 C.F.R. 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 C.F.R. 52.21 (1)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 C.F.R. 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 C.F.R. 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 C.F.R. 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 C.F.R. 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 C.F.R. 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 C.F.R. 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p)(1), (2), (3) and (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21:

(A) ~~(In 40 C.F.R. 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.~~

~~(B) 40 C.F.R. 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.~~

~~(C) 40 C.F.R. 52.21(e) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.~~

~~(D)) In (a)(2)(iv)(c): "Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase between the projected actual emissions (as defined in paragraph (b)(41) of this section) and the baseline actual emissions (as defined in paragraphs (b)(48)(i) and (ii) of this section), for each existing emissions unit, equals or exceeds the~~

significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(B) In (a) (2) (iv) (d): "Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase between the potential to emit (as defined in paragraph (b) (4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b) (48) (iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(C) In (a) (2) (iv) (f): "Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase for each emissions unit, using the method specified in paragraphs (a) (2) (iv) (c) and (d) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(D) In 40 C.F.R. 52.21 (b) (1) (i) (a) and (b) (1) (iii) (h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(E) 40 C.F.R. 52.21 (b) (23) (i) after the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(F) 40 C.F.R. 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption."

(G) 40 C.F.R. 52.21 (r) (6)

"The provisions of this paragraph (r) (6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 C.F.R. 52.21 (b) (41) (ii) (a) through (c) for calculating projected actual emissions.

- (i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
 - (a) A description of the project;
 - (b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - (c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 C.F.R. 52.21 (b) (41) (ii) (c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

- (ii) The owner or operator shall submit a copy of the information set out in paragraph 40 C.F.R. 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.
- (iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 C.F.R. 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.
- (iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 C.F.R. 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 C.F.R. 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 C.F.R. 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:
 - (a) The name, address and telephone number of the major stationary source;
 - (b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and
 - (c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- (vi) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:
 - (a) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (r)(6)(vi)(b) of this subsection, and not also within the meaning of (r)(6)(vi)(a) of this subsection, then the provisions of (r)(6)(vi)(ii) through (v) of this subsection do not apply to the project."

((E)) (H) 40 C.F.R. 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 C.F.R. 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 C.F.R. 70.4 (b)(3)(viii)."

((F)) (I) 40 C.F.R. 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

((G)) (J) 40 C.F.R. 52.21 (aa)(5) "Public participation requirements for PALS. PALS for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

((H)) (K) 40 C.F.R. 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

((I)) (L) 40 C.F.R. 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 C.F.R. 52.21 (aa)(14)(i) through (iii)."

((J)) (M) 40 C.F.R. 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) The following provisions in 40 C.F.R. 52.21 ((r)(2) is)) are not adopted: (a)(2)(iv)(g) and (r)(2).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-720, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-720, filed 11/28/12, effective 12/29/12; WSR 11-17-037 (Order 11-04), § 173-400-720, filed 8/10/11, effective

9/10/11; WSR 11-06-060 (Order 09-01), § 173-400-720, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-720, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-720, filed 1/10/05, effective 2/10/05.]

OTS-4007.2

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-030 Adoption by reference. (1) This chapter adopts by reference California Code of Regulations((r)) in the following titles:

(a) Title 13, sections 1900, 1956.8 ((g) and (h))), 1960.1, 1961, 1961.1 to ((1961.3)) 1961.4, 1962.2 to 1962.8, ((1962.3,)) 1963, 1963.1 to 1963.5, 1965, 1968.2, 1968.5, 1969, 1971.1, 1971.5, 1976, 1978, 2035 to 2040, 2046, 2109, 2111 to ((2120, 2122 to)) 2133, 2135, ((2141)) 2137, 2139 to 2149, 2166, 2166.1, 2167, 2168, 2169, 2169.1 to 2169.8, 2170, 2235, 2423, 2485 and Appendix A to Article 2.1 in section 2112;

(b) Exception to adopting Title 13 by reference. The following sections are not adopted by reference:

- (i) Section 1956.8 (a)(2)(F); and
- (ii) Section 1962.4 (e)(2)(A)3.a.i and ii; and
- (c) Title 17, sections 95300 to 95307, 95311, and 95660 to 95663.

(2) Adoption or adoption by reference means the rule applies as if it was copied into this rule. California Code of Regulations mentioned in this rule are adopted as they exist on ((June 22, 2021)) September 7, 2022, or the adoption date in WAC 173-400-025(1), whichever is later.

(3) Copies of the relevant sections of California Code of Regulations adopted by reference in this chapter are available on ecology's website or by contacting:

Washington State Department of Ecology
Air Quality Program
300 Desmond Drive
Lacey, WA 98503
360-407-6800

(4) For purposes of applying the adopted sections of California Code of Regulations in Washington, unless the context requires otherwise:

- (a) "California" means "Washington";
- (b) "CARB," "ARB," or "air resources board" means "ecology"; and
- (c) "Executive officer" means "ecology."

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-030, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-030, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-040 Definitions and abbreviations. The following definitions apply to the administration of this chapter. Any term that is not defined in this section must be as defined or described in California Code of Regulations, Title 13, section 1900 or 1963, or Title 17, section 95662, as applicable. Definitions in California Code of Regulations, Title 13, section 1900 or 1963, or Title 17, section 95662 will prevail if any discrepancy arises.

(1) "Authorized emergency vehicle" is defined as provided in RCW 46.04.040.

(2) "Ecology" means the department of ecology.

((2+)) (3) "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

((3+)) (4) "Light-duty truck" is defined as provided in California Code of Regulations, Title 13, section 1900.

((4+)) (5) "Medium-duty passenger vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

((5+)) (6) "Medium-duty vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

((6+)) (7) "Model year": Means the manufacturer's annual production period that includes January 1st of a calendar year, or if the manufacturer has no annual production period, the calendar year. The model year for a motor vehicle manufactured in two or more stages is the model year in which the chassis is completed, except for a vehicle subject to California Code of Regulations, Title 13, sections 1963 through 1963.5 (Advanced Clean Trucks): Is defined as provided in California Code of Regulations, Title 13, section 1963(c).

((7+)) (8) "Manufacturer" means an independent low volume manufacturer, intermediate volume manufacturer, large volume manufacturer, or a small volume manufacturer defined as provided in California Code of Regulations, Title 13, section 1900.

((8+)) (9) "Passenger car" is defined as provided in California Code of Regulations, Title 13, section 1900.

((9+)) (10) "Transit agency" is defined as provided in California Code of Regulations, Title 13, section 2023.

(11) "Zero-emission vehicle" or "ZEV" is defined as provided in California Code of Regulations, Title 13, section 1962.2(a).

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-040, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 12-24-033 (Order 11-01), § 173-423-040, filed 11/28/12, effective 12/29/12; WSR 05-24-044, § 173-423-040, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-060 Exemptions. The following vehicles are not subject to this chapter:

(1) Military tactical vehicles;

(2) Vehicles sold for registration and use out-of-state;

(3) Previously registered vehicles where the mileage at the time of sale exceeds 7,500 miles, provided that for vehicle dealers, the mileage at the time of sales is determined by the odometer statement at the time the vehicle dealer acquired the vehicle;

(4) Vehicles that are only available for rent to a final destination outside of Washington;

(5) Vehicles purchased by a nonresident prior to establishing residency in Washington, regardless of the mileage on the vehicle;

(6) Vehicles transferred by inheritance or as a result of divorce, dissolution or legal separation;

(7) Motor vehicles purchased for use by a local police department, county sheriff, fire district, or the Washington state patrol; and

(8) Motor vehicles acquired by a resident who is a member of the military stationed outside Washington pursuant to military orders.

(9) The following vehicles are exempt from WAC 173-423-081:

(a) Beginning on January 1, 2025, new diesel-fueled buses sold to a transit agency, provided that they comply with applicable motor vehicle emission standards for transit agency vehicles set out in this chapter;

(b) Authorized emergency vehicles, as defined in RCW 46.04.040.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-060, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 12-24-033 (Order 11-01), § 173-423-060, filed 11/28/12, effective 12/29/12; WSR 05-24-044, § 173-423-060, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-070 Low emission vehicles. (1) **Requirement to meet California vehicle emission standards.** All vehicles subject to this chapter must be certified to the standards adopted by reference in WAC 173-423-030 to be registered, leased, rented, licensed, or sold for use in Washington:

(a) Starting with model year 2009: Passenger car, light-duty truck, or medium-duty passenger vehicle; and

(b) Starting with model year 2025: Medium-duty vehicle.

(2) **Fleet average emissions - Nonmethane organic gas (NMOG) plus oxides of nitrogen exhaust.**

(a) Effective model year 2009 through 2014, except as provided in this subsection, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars and light-duty trucks delivered for sale in Washington must not exceed the fleet average NMOG exhaust emission requirement in California Code of Regulations, Title 13, section 1961(b). For the 2014 model year only, a manufacturer may comply with the fleet average NMOG + NOx values in (b) of this subsection in lieu of complying with the NMOG fleet average emissions in this subsection. A manufacturer must either comply with the NMOG + NOx fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet or comply with the NMOG fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet. A manufacturer must calculate its fleet

average NMOG + NOx values using the applicable full useful life standards.

(b) Starting with model year 2015, a motor vehicle manufacturer must comply with the fleet average nonmethane organic gas plus oxides of nitrogen emission values as provided in California Code of Regulations, Title 13, sections 1961.2(b) and 1961.4(c).

(c) Emission credits and debits may be accrued and used as provided in California Code of Regulations, Title 13, sections 1961.2(c) and 1961.4(e).

(d) Each manufacturer must submit a report to ecology by March 1st of the calendar year containing the fleet average emissions for the model year that ended most recently. The report must follow California Code of Regulations, Title 13, sections 1961.2 and 1961.4, and must be in the same format used to report the information to the California air resources board.

(e) If a report submitted by the manufacturer under ((+e)) (d) of this subsection demonstrates that the manufacturer does not comply with the fleet average emission standard, the manufacturer must submit to ecology within 60 days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.2 (c)(3) and 1961.4 (e)(3);

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state;

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(3) Fleet average emissions - Greenhouse gas exhaust.

(a) Starting with model year 2009, a motor vehicle manufacturer must comply with the emission standards, fleet average greenhouse gas exhaust emission requirements, and other requirements provided in California Code of Regulations, Title 13, sections 1961.1 and 1961.3.

(b) Emissions credits and debits may be accrued and used in accordance with California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b).

(c) Each manufacturer must submit a report to ecology by March 1st that includes end-of-model year data calculating the fleet average greenhouse gas emissions for the model year that has just ended. The report must include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to California Code of Regulations, Title 13, sections 1961.1 and 1961.3. The report must follow the procedures in California Code of Regulations, Title 13, sections 1961.1 and 1961.3 and must be in the same format used to report this information to the California air resources board.

(d) If the report submitted by the manufacturer under this subsection demonstrates that the manufacturer does not comply with the fleet average emission standards, the manufacturer must submit to ecology within 60 days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b), as appropriate.

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage

of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state.

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(4) Manufacturer delivery reporting requirements.

(a) The manufacturer must submit to ecology one copy of the California executive order and certificate of conformity for certification of new motor vehicles for each engine family to be sold in Washington within 30 days of ecology's request. If these reports are available electronically, the manufacturer must send the record in an electronic format acceptable to ecology.

(b) Commencing with the 2009 model year and prior to the beginning of each model year, upon request, each manufacturer must submit to ecology a list of all models of medium-duty vehicles and medium-duty passenger vehicles that will be delivered to Washington dealers.

(c) Upon request, each manufacturer must report to ecology the vehicle identification numbers (VIN) of each passenger car, light-duty truck, medium-duty passenger vehicle, and medium-duty vehicle delivered to each Washington dealer that is not certified to California emission standards.

(d) For the purposes of determining compliance with this chapter, ecology may require a vehicle manufacturer to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter, including all certification materials submitted to the California air resources board.

(5) Warranty requirements.

(a) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements in California Code of Regulations, Title 13, sections 2035 through 2038, 2040, and 2046.

(b) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must include the emission control system warranty statement that complies with the requirements in California Code of Regulations, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Washington vehicle owners of the applicability of the warranty. The manufacturer must provide a telephone number appropriate for Washington residents.

(c) All manufacturers must submit to ecology failure of emission-related components reports as defined in California Code of Regulations, Title 13, section 2144 for vehicles subject to this chapter. For purposes of compliance with this requirement, manufacturers may submit copies of the failure of emission-related components reports that are submitted to the California air resources board, in lieu of submitting reports for vehicles subject to this chapter. Manufacturers may discontinue submitting these reports if notified by ecology.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-070, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 19-02-056 (Order 18-11), § 173-423-070, filed 12/27/18, effective 1/27/19; WSR 16-12-099 (Order 16-01), § 173-423-070, filed 5/31/16, effective 7/1/16; WSR 12-24-033 (Order 11-01), § 173-423-070, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.120A.010 and 70.120A.050. WSR 09-03-077 (Order 08-16), § 173-423-070, filed 1/15/09, effective 2/15/09. Statutory Au-

thority: RCW 70.120A.010. WSR 05-24-044, § 173-423-070, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-075 Zero-emission vehicle standards. (1) Requirement to meet California vehicle emission standards - Passenger cars, light-duty trucks, and medium-duty vehicles.

(a) Applicability.

(i) Starting with model year 2025, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1962.2 and 1962.3, adopted by reference in WAC 173-423-030((-)); and

(ii) Starting with model year 2026, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with the following sections of the California Code of Regulations, Title 13, adopted by reference in WAC 173-423-030:

"(G) 1962.4. Zero-Emission Vehicle Standards for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;

(H) 1962.5. Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles;

(I) 1962.6. Battery Labeling Requirements;

(J) 1962.7. In-Use Compliance, Corrective Action and Recall Protocols for Zero Emission for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;

(K) 1962.8. Warranty Requirements for Zero Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;"

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, sections ((1962.3)) 1962.2 and 1962.4.

(c) ZEV credits and values.

(i) ZEV credits may ((only)) be earned ((by model year 2025 and subsequent vehicles)) for ZEV sales of model year 2023, 2024, and 2025 vehicles, as allowed by California Code of Regulations, Title 13, section 1962.2 (Advanced Clean Cars I).

(ii) ZEV values may be earned as allowed by California Code of Regulations, Title 13, section 1962.4 (Advanced Clean Cars II).

(2) Requirement to meet California vehicle emission standards - On-road vehicles over 8,500 GVWR. (California advanced clean trucks regulation)

(a) Applicability. Starting with model year 2025, any manufacturer that certifies on-road vehicles over 8,500 pounds GVWR for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1963 through 1963.5, adopted by reference in WAC 173-423-030.

(i) Section 1963. Advanced Clean Trucks Purpose, Applicability, Definitions, and General Requirements;

(ii) Section 1963.1. Advanced Clean Trucks Deficits;

- (iii) Section 1963.2. Advanced Clean Trucks Credit Generation, Banking, and Trading;
- (iv) Section 1963.3. Advanced Clean Trucks Compliance Determination;
- (v) Section 1963.4. Advanced Clean Trucks Reporting and Record-keeping; and
- (vi) Section 1963.5. Advanced Clean Trucks Enforcement.

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, section 1963.4.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-075, filed 11/29/21, effective 12/30/21.]

NEW SECTION

WAC 173-423-081 Medium- and heavy-duty vehicle emission standards. (1) Requirements to meet California vehicle emission standards. These standards establish criteria and procedures for the manufacture, testing, distribution and sale of new on-highway medium- and heavy-duty trucks and engines in Washington as adopted by reference in WAC 173-423-030.

(2) Applicability.

(a) Starting with model year 2026, on-highway heavy-duty engines, trucks and trailers delivered for sale or sold in Washington, except as provided in WAC 173-423-060, must comply with California Code of Regulations, Titles 13 and 17, adopted by reference in WAC 173-423-030.

(b) Requirement to meet vehicle emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference.

(i) Starting with the 2026 engine model year and for each engine model year thereafter no person may deliver for sale, or sell, in Washington any new on-highway heavy-duty engine unless the engine is certified to the California emission standards as required under WAC 173-423-030, except as provided in WAC 173-423-060 Exemptions.

(ii) Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty engines and trucks and trailers must comply with each of the following applicable standards specified in California Code of Regulations, Title 13 adopted by reference in WAC 173-423-030:

(A) Section 1956.8 (a) - (f) and (i) Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles. Except that California Code of Regulations, Title 13, Section 1956.8 (a)(2)(F) "Transit Agency Diesel-Fueled Bus Engine Exemption Request" must be disregarded and is not incorporated by reference;

(B) Section 1971.1 On-Board Diagnostic System Requirements - 2010 and Subsequent Model-Year Heavy-Duty Engines;

(C) Section 2036 Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles;

and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers;

- (D) Section 2121 Penalties;
- (E) Section 2137 Vehicle, Engine, and Trailer Selection;
- (F) Section 2139 Testing;
- (G) Section 2139.5 CARB Authority to Test for Heavy-Duty In-Use Compliance;
- (H) Section 2140 Notification and Use of Test Results;
- (I) Section 2166 General Provisions;
- (J) Section 2166.1 Definitions;
- (K) Section 2167 Required Recall and Corrective Action for Failures of Exhaust After Treatment Devices, On-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors;
- (L) Section 2168 Required Corrective Action and Recall for Emission-Related Component Failures;
- (M) Section 2169 Required Recall or Corrective Action Plan;
- (N) Section 2169.1 Approval and Implementation of Corrective Action Plan;
- (O) Section 2169.2 Notification of Owners;
- (P) Section 2169.3 Repair Label;
- (Q) Section 2169.4 Proof of Correction Certificate;
- (R) Section 2169.5 Preliminary Tests;
- (S) Section 2169.6 Communication with Repair Personnel;
- (T) Section 2169.7 Recordkeeping and Reporting Requirements;
- (U) Section 2169.8 Extension of Time;
- (V) Section 2423(n) Exhaust Emission Standards and Test Procedures – Off-Road Compression-Ignition Engines; and
- (W) Section 2485 Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling.

(iii) Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty engines and trucks and trailers must comply with each of the following applicable standards specified in California Code of Regulations, Title 17 adopted by reference in WAC 173-423-030:

- (A) Section 95660 Purpose;
- (B) Section 95661 Applicability;
- (C) Section 95662 Definitions; and
- (D) Section 95663 Greenhouse Gas Exhaust Emission Standards and Test Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles.

(3) Recalls. Any order issued or enforcement action taken by the California Air Resources Board to correct noncompliance with any section of California Code of Regulations, Title 13, that results in the recall of any vehicle as required under California Code of Regulations, Title 13, sections 2109 – 2135, for a vehicle subject to the requirements adopted by reference in WAC 173-423-030, will be prima facie evidence concerning vehicles registered in Washington. If the manufacturer can demonstrate to ecology's satisfaction that the order or action is not applicable to vehicles registered in Washington, ecology will not pursue a recall of vehicles registered in Washington.

(4) Inspections and Information Requests.

(a) Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this section. Ecology inspections will occur during regular business hours on public property or on any premises owned, operated,

or used by any truck dealer or truck rental agency for the purposes of determining compliance with the requirements of this division.

(b) For the purposes of determining compliance with this section, ecology may require any truck dealer or truck rental agency to submit to ecology any documentation that ecology deems necessary to the effective administration and enforcement of this section. This provision does not require creation of new records.

[]

NEW SECTION

WAC 173-423-083 Fleet reporting requirement. (1) Applicability.

(a) Except as provided in subsection (2) of this section, the following persons must submit to ecology all of the information in subsection (3) of this section. As used in this section, all operations conducted by persons under common ownership or control must be aggregated and considered to be one person to determine fleet reporting applicability.

(i) Any person that owns or operates a business with gross annual revenues greater than \$50,000,000 in the United States for the 2022 tax year, including revenues from all subsidiaries, subdivisions, or branches, and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds GVWR operated in Washington in 2022.

(ii) Any person that owns or operates a facility in Washington and that, in the 2022 calendar year, owned or operated five or more vehicles with a GVWR greater than 8,500 pounds.

(iii) Any person that operated a facility in Washington and that, in the 2022 calendar year, dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.

(iv) Any Washington government agency, including state and local government, that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

(v) Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

(b) The following vehicles and persons are exempt from the reporting requirements in this section:

- (i) Vehicles awaiting sale; and
- (ii) Authorized emergency vehicles.

(2) General requirements.

(a) All persons required to report under this rule must report information to ecology no later than September 30, 2023.

(b) Subsidiaries, parent companies, or joint ventures may independently report information for each vehicle over 8,500 pounds. Alternatively, the corporate parent or joint venture business may report on behalf of its subsidiaries, as long as the information for all vehicles over 8,500 pounds is reported for each subsidiary, corporate parent, and joint venture.

(c) A person subject to this subsection and that has brokerage or motor carrier authority, or both, must submit a report, even if no vehicles are owned by the person.

(d) Information pertaining to vehicles that are under common ownership or control may be submitted separately by each fleet owner.

(e) A person that is a fleet owner may report vehicle data as the fleet was comprised on any date of the person's choosing, so long as that date falls between January 1, 2022, and December 31, 2022.

(3) Fleet reporting requirement. A person required to report under this section must report the information according to the requirements of each provision of this section. The reporting must include information for each and every operation under common ownership or control.

(a) General information.

(i) Name (i.e., if a business, the registered business name) and all business names that the person does business as (i.e., all "dba" or "doing business as" names);

(ii) Mailing address including street name or P.O. box, city, state, and zip code;

(iii) Name of the responsible official;

(iv) Responsible official's email address;

(v) Responsible official's phone number;

(vi) Name of corporate parent or governing body, as applicable;

(vii) Federal taxpayer identification number of corporate parent or other persons with which the reporting person has vehicles under common or control;

(viii) For a government agency, the jurisdiction (federal, state, or local); federal taxpayer identification number; primary six-digit North American Industry Classification System code;

(ix) For a nongovernmental person, the total annual revenue for the person in the United States for 2022;

(x) Broker authority under the Federal Motor Carrier Safety Administration;

(xi) The operating authority numbers, including motor carrier identification number, United States Department of Transportation number, and International Registration Plan number;

(xii) The number of persons with whom the reporting person had a contract to deliver items or to perform work in Washington using vehicles over 8,500 pounds GVWR in 2022;

(xiii) The estimated number of subhaulers, vehicles operated by subhaulers, and the number of vehicles operated by subhaulers that operated under the reporting person's motor carrier authority; and

(xiv) The number of vehicles with a GVWR over 8,500 pounds the reporting person owned and operated in Washington in 2022 that do not have a vehicle home base in Washington.

(b) Vehicle home base. A person required to report under this section must report general information about the vehicle home base. Vehicles that accrue a majority of their annual miles in Washington but are not assigned to a particular location in Washington must be reported as part of the person's headquarters or the location where the vehicles' operation is managed. The person must report for each vehicle home base:

(i) Facility address including street name, city, state, and zip code;

(ii) Facility type category, using one of the following categories:

(A) Administrative/office building;

(B) Distribution center/warehouse;

(C) Hotel/motel/resort;

(D) Manufacturer/factory/plant;

(E) Medical/hospital/care;

(F) Multibuilding campus/base;

- (G) Restaurant;
- (H) Service center;
- (I) Store;
- (J) Truck/equipment yard; and
- (K) Any other facility type;

- (iii) Name of responsible official;

- (iv) Responsible official's email address;

- (v) Whether the facility is owned or leased by the person;

- (vi) What type of fueling infrastructure is installed at the facility;

- (vii) Whether the refueling infrastructure at the facility was initially installed on or after January 1, 2010; and

- (viii) The types of trailers the reporting person pulls, if it has tractors assigned or domiciled at this facility.

(c) For each vehicle home base, a person may report the information grouped by vehicle body type, and weight class bins and fuel type. A person may complete responses for each individual vehicle and include the vehicle's body type, weight class bin, and fuel type. If applicable, a person must separately report vehicles dispatched under their brokerage authority. When responding, each vehicle must only be counted once for each response. A person must report:

- (i) Number of vehicles in each vehicle group;

- (ii) Model year of the vehicle and engine for each reported vehicle;

- (iii) The percent of the vehicles in each vehicle group with operating characteristics including, but not limited to: Daily mileage, usage patterns, refueling, trailer towing, and other such characteristics as specified by ecology. The term "usage pattern" shall include:

- (A) Average number of trips per day;

- (B) Typical destination points for vehicles within each group;

- (C) Locations where trucks are parked for two hours or more per day, if different from the vehicle home base;

- (iv) The average annual mileage for a typical vehicle in this vehicle group;

- (v) The average length of time a typical vehicle in this vehicle group is retained by the reporting entity after acquisition;

- (vi) Whether the reporting person is the fleet owner for this group of vehicles, or if they are dispatched under the reporting person's brokerage authority; and

- (vii) The start and end date of the analysis period selected by the reporting person as required under (d) of this subsection.

(d) A person must choose a period of time, for example annual or quarterly data averaged for work days during the period selected to determine responses. For example, if an entity selects annual data to determine vehicle daily mileage, the person must average the annual mileage accrued based on the number of work days that year.

- (i) A shorter analysis period may be used if the reporting person deems it more representative of periods of high vehicle utilization when answering questions about typical daily operation. For example, if a reporting person with seasonal workload fluctuations determines that a week or month during the busy season is representative, average the data records for that week or month when determining a response.

- (ii) If an alternative analysis period is used, the reporting person must be prepared to describe their reasoning at the request of ecology.

- (e) For information reported for a vehicle group at one location, a reporting person may repeat that information for the same vehicle

group at another vehicle home base if the reporting person determines that the operation at the second location is substantially similar to that at the first location.

(f) A broker must provide information about vehicle usage that is dispatched under contract, such as if a broker hires a truck to move a load, only the miles driven under that contract are required for the response. If known, the broker may voluntarily report information about the miles driven outside the contract.

(4) Fleet reporting recordkeeping.

(a) A person required to report must maintain all of the following records related to the reporting for five years after the reporting deadline:

(i) For owned on-road vehicles, mileage records and dates from records, such as maintenance logs, vehicle logs, or odometer readings, or other records with the information that the reporting person used to prepare the information the person submitted;

(ii) For on-road vehicles not owned, but dispatched by the person, dispatch records and dates, contracts, or other records with the information that the reporting person used to prepare the information the person submitted;

(iii) Vehicle registration for each owned vehicle operated in Washington; and

(iv) Contracts with persons, or contracts with subhaulers, or other records with the information that the reporting person used to prepare the information the person submitted.

(b) A person subject to this section must respond to requests for clarification of reported information within 14 days of receiving the request from ecology.

[]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-130 ((Surveillance.)) Inspections and information requests. (1) Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this chapter. Ecology inspections must occur during regular business hours and on any premises owned, operated or used by any dealer or rental car agency.

(2) For the purposes of determining compliance with this chapter, ecology may require a vehicle dealer or rental car agency to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter. This provision does not require creation of new records.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-130, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-130, filed 11/30/05, effective 12/31/05.]

WSR 22-18-104

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed September 7, 2022, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-102.

Title of Rule and Other Identifying Information: WAC 36-12-195

License fees, renewals and requirements, 36-13-010 License fees, renewals and requirements, 36-14-110 License fees, renewals and requirements, 308-11-030 Auctioneer fees, 308-14-200 Court reporter fees, 308-17-150 Private investigative agency, private investigator, and armed private investigator fees, 308-18-150 Private security guard company, private security guard, and armed private security guard fees, 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees, 308-20-210 Fees, 308-22-050 Fees, 308-29-045 Collection agency fees, 308-30-060 Application fees, 308-33-105 Employment agency fees, 308-124A-775 Real estate fees, 308-127-160 Fees, 308-129-110 Seller of travel registration fees, 308-312-060 Fees, 308-320-050 Registration fees, 308-320-060 Annual renewal dates, forms, and fees, 308-408A-090 Home inspector fees, and 308-420-420 Fees and charges.

Hearing Location(s): On October 11, 2022, at 10:00 a.m. Join Zoom meeting link <https://dol-wa.zoom.us/j/85828450608?pwd=WkVPdTdyTitJbVpqdHA4U3JybC9VUT09>, Meeting ID 858 2845 0608, Passcode 937838, one tap mobile +12532158782,,85828450608#,,,,*937838# US (Tacoma), +16694449171,,85828450608#,,,,*937838# US; dial by your location, +1 253 215 8782 US (Tacoma), +1 669 444 9171 US. Find your local number <https://dol-wa.zoom.us/u/kcNWjgM8l2>. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-3846.

Date of Intended Adoption: October 21, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by October 7, 2022.

Assistance for Persons with Disabilities: Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by October 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees across various programs to continue covering the costs to administer these programs as these costs have increased over the years. Fees impacted by this rule making are: Appraisers, bail bond, body art and tattoo, camping resorts, collections, combative sports, cosmetologists and other personal services licensees, employment agencies, home inspection, notaries public, private investigators, security guards, timeshares, sellers of travel, commercial telephone solicitors, and whitewater river outfitters.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Many of these programs have not seen an increase in fees for some time, some since as far back as 1990. Current fees are insufficient to sustain these programs. The department is considering fee increases that would go into effect Fall of 2022.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

September 6, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3939.2

AMENDATORY SECTION (Amending WSR 13-21-149, filed 10/23/13, effective 12/1/13)

WAC 36-12-195 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	((<u>\$65.00</u>)) <u>\$76.00</u>
Referee	-	((<u>\$65.00</u>)) <u>\$76.00</u>
Boxer	-	((<u>\$25.00</u>)) <u>\$35.00</u>
Matchmaker	-	((<u>\$65.00</u>)) <u>\$76.00</u>
Second	-	((<u>\$25.00</u>)) <u>\$35.00</u>
Inspector	-	((<u>\$65.00</u>)) <u>\$76.00</u>
Judge	-	((<u>\$65.00</u>)) <u>\$76.00</u>

Timekeeper	-	(((\$65.00)) \$76.00)
Announcer	-	(((\$65.00)) \$76.00)
Event physician	-	No charge
Event chiropractor	-	(((\$65.00)) \$76.00)
Promoter	-	(((\$500.00)) \$540.00)

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

- (a) Completed application on form approved by the department.
- (b) Completed physical within one year (boxer and referee only).
- (c) Federal identification card (boxer only).
- (d) One small current photograph, not more than two years old (boxer only).
- (e) Payment of license fee.
- (f) Certification from an organization approved by the department under RCW 67.08.100(3) and WAC 36-12-196.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

[Statutory Authority: RCW 43.24.023, 67.08.015, and 67.08.017. WSR 13-21-149, § 36-12-195, filed 10/23/13, effective 12/1/13. Statutory Authority: RCW 67.08.017, 43.24.086, 67.08.105. WSR 10-08-037, § 36-12-195, filed 4/1/10, effective 5/2/10. Statutory Authority: RCW 67.08.017, 67.08.105, and 43.24.023. WSR 02-20-094, § 36-12-195, filed 10/1/02, effective 1/1/03. Statutory Authority: RCW 67.08.017(1). WSR 01-22-029, § 36-12-195, filed 10/29/01, effective 11/29/01; WSR 00-02-054, § 36-12-195, filed 12/31/99, effective 1/31/00. Statutory Authority: Chapter 67.08 RCW. WSR 97-01-035, § 36-12-195, filed 12/10/96, effective 1/10/97; WSR 91-11-038, § 36-12-195, filed 5/10/91, effective 6/10/91.]

OTS-3940.2

AMENDATORY SECTION (Amending WSR 17-21-118, filed 10/18/17, effective 11/21/17)

WAC 36-13-010 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Wrestling participant	-	(((\$25.00)) \$35.00)
Inspector	-	(((\$65.00)) \$76.00)
Event physician	-	No charge
Promoter	-	(((\$200.00)) \$234.00)

Theatrical wrestling school	-	(((\$500.00)) <u>\$540.00</u>
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(2) No license fee is required for persons licensed under chapter 36-12 or 36-14 WAC as an inspector, event physician or promoter.

(3) In addition to license requirements found in chapter 67.08 RCW:

(a) Wrestling participants shall submit a small photograph of themselves that is not more than two years old.

(b) Theatrical wrestling schools:

(i) Must provide proof of having an established place of business that offers training in theatrical wrestling.

(ii) Must provide proof of having an active tax registration through the department of revenue.

(iii) Must reapply for licensure when there is a change in the location or change in ownership.

[Statutory Authority: RCW 67.08.330(4), 67.08.017, and 43.24.086. WSR 17-21-118, § 36-13-010, filed 10/18/17, effective 11/21/17. Statutory Authority: RCW 67.08.017, 43.24.023, and 43.24.086. WSR 15-23-055, § 36-13-010, filed 11/12/15, effective 12/13/15. Statutory Authority: RCW 67.08.017, 43.24.086, 67.08.105. WSR 10-08-037, § 36-13-010, filed 4/1/10, effective 5/2/10. Statutory Authority: RCW 67.08.017, 67.08.105, and 43.24.023. WSR 02-20-094, § 36-13-010, filed 10/1/02, effective 1/1/03. Statutory Authority: RCW 67.08.017(1). WSR 00-02-054, § 36-13-010, filed 12/31/99, effective 1/31/00.]

OTS-3941.2

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-110 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	(((\$65.00)) <u>\$76.00</u>
Referee	-	(((\$65.00)) <u>\$76.00</u>
Kickboxer	-	(((\$25.00)) <u>\$35.00</u>
Martial arts participant	-	(((\$25.00)) <u>\$35.00</u>
Amateur mixed martial arts participant	-	(((\$25.00)) <u>\$35.00</u>
Matchmaker	-	(((\$65.00)) <u>\$76.00</u>
Second	-	(((\$25.00)) <u>\$35.00</u>
Inspector	-	(((\$65.00)) <u>\$76.00</u>
Judge	-	(((\$65.00)) <u>\$76.00</u>

Timekeeper	-	(((\$65.00)) <u>\$76.00</u>
Announcer	-	(((\$65.00)) <u>\$76.00</u>
Event physician	-	No charge
Event chiropractor	-	(((\$65.00)) <u>\$76.00</u>
Promoter	-	(((\$500.00)) <u>\$540.00</u>
Training facility	-	(((\$500.00)) <u>\$540.00</u>
Amateur mixed martial arts sanctioning organization	-	(((\$500.00)) <u>\$540.00</u>

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (kickboxer, martial arts participant, amateur mixed martial arts participant, and referee only).

(c) One small current photograph, not more than two years old (kickboxer, martial arts participant, and amateur mixed martial arts participants only).

(d) Payment of license fee.

(e) Certification from an organization approved by the department under RCW 67.08.100(3).

(f) Training facility: Have an established place of business that offers training in one or more of the mixed martial arts and a current tax registration through the department of revenue.

(g) Amateur mixed martial arts sanctioning organizations:

(i) Have an established place of business that offers training in one or more of the mixed martial arts;

(ii) Have a current tax registration through the department of revenue;

(iii) Have a minimum of three years total combined amateur or professional experience in at least three of the following areas: Referee, promoter, judge, inspector, have an established place of business that offers training in one or more of the mixed martial arts;

(iv) Provide to the department a list of authorized representatives who will be in charge of events or exhibitions. Changes to this list will not be accepted within ((thirty)) 30 days prior to an event or exhibition.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

[Statutory Authority: RCW 43.24.023, 43.24.086, 67.08.015, 67.08.017, 67.08.105, 67.08.107, and 2012 c 99. WSR 12-24-045, § 36-14-110, filed 11/30/12, effective 1/1/13. Statutory Authority: RCW 67.08.017, 43.24.086, 67.08.105. WSR 10-08-037, § 36-14-110, filed 4/1/10, effective 5/2/10. Statutory Authority: RCW 67.08.017, 67.08.105, and 43.24.023. WSR 02-20-094, § 36-14-110, filed 10/1/02, effective 1/1/03. Statutory Authority: RCW 67.08.017(1). WSR 00-02-054, § 36-14-110, filed 12/31/99, effective 1/31/00.]

OTS-3942.2

AMENDATORY SECTION (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

WAC 308-11-030 Auctioneer fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Auctioneer:	
Initial application	((<u>\$155.00</u>)) <u>\$181.00</u>
Renewal	((<u>+55.00</u>)) <u>181.00</u>
Late renewal penalty	((<u>+100.00</u>)) <u>117.00</u>
((Duplicate)) <u>License print fee</u>	((<u>+5.00</u>)) <u>5.00</u>
Certification	25.00
Auction company:	
Initial application	((<u>255.00</u>)) <u>295.00</u>
Renewal	((<u>255.00</u>)) <u>295.00</u>
Late renewal penalty	((<u>+100.00</u>)) <u>117.00</u>
((Duplicate)) <u>License print fee</u>	((<u>+5.00</u>)) <u>5.00</u>

[Statutory Authority: RCW 18.11.200 and 43.24.086. WSR 07-16-036, § 308-11-030, filed 7/23/07, effective 9/1/07. Statutory Authority: RCW 18.11.060, 43.24.086, 43.24.023. WSR 04-17-074, § 308-11-030, filed 8/13/04, effective 10/1/04. Statutory Authority: RCW 18.11.060, 43.24.086 and 43.135.055. WSR 98-16-061, § 308-11-030, filed 8/3/98, effective 9/3/98. Statutory Authority: RCW 43.24.086. WSR 90-06-052, § 308-11-030, filed 3/2/90, effective 4/2/90; WSR 87-10-028 (Order PM 650), § 308-11-030, filed 5/1/87. Statutory Authority: RCW 18.11.060. WSR 86-21-127 (Order PM 622), § 308-11-030, filed 10/22/86. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-11-030, filed 8/10/83. Formerly WAC 308-11-001.]

OTS-3944.2

AMENDATORY SECTION (Amending WSR 09-22-051, filed 10/29/09, effective 12/1/09)

WAC 308-14-200 Court reporter fees. The following fees shall be charged by the business and professions division, department of licensing:

Title of Fee	Fee
Certification	
Application	((<u>\$150.00</u>)) <u>\$190.00</u>
Renewal	((<u>+25.00</u>)) <u>165.00</u>
Late renewal penalty	((<u>+25.00</u>)) <u>165.00</u>
Verification	25.00
((Duplicate)) License print fee	((<u>+5.00</u>)) <u>5.00</u>

[Statutory Authority: RCW 43.24.086 and 18.145.050. WSR 09-22-051, § 308-14-200, filed 10/29/09, effective 12/1/09; WSR 07-16-036, § 308-14-200, filed 7/23/07, effective 9/1/07. Statutory Authority: RCW 18.145.050, 43.24.086, 43.24.023. WSR 04-17-073, § 308-14-200, filed 8/13/04, effective 10/1/04. Statutory Authority: RCW 18.145.050, 43.24.086 and 43.135.055. WSR 98-16-060, § 308-14-200, filed 8/3/98, effective 9/3/98. Statutory Authority: Chapter 18.145 RCW and RCW 43.24.086. WSR 90-10-009, § 308-14-200, filed 4/20/90, effective 5/21/90.]

OTS-3946.2

AMENDATORY SECTION (Amending WSR 16-13-003, filed 6/1/16, effective 7/2/16)

WAC 308-17-150 Private investigative agency, private investigator, and armed private investigator fees. Licenses issued to private investigator agencies and private investigators expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private investigative agency/principal fee:	
Application/examination/includes first examination plus current applicable background check fees	((<u>\$600.00</u>)) <u>\$640.00</u>
Principal armed endorsement	((<u>+100.00</u>)) <u>117.00</u>
Reexamination	25.00
License renewal	((<u>-350.00</u>)) <u>390.00</u>
Late renewal penalty	See below*
Change of principal/includes first examination plus current applicable background check fees	150.00
Private investigator:	
Original license plus current applicable background check fees	((<u>-200.00</u>)) <u>234.00</u>
Armed endorsement plus current applicable background check fees	((<u>+100.00</u>)) <u>117.00</u>

Title of Fee	Fee
Transfer fee	25.00
License renewal	((75.00)) <u>205.00</u>
Late renewal ((with)) penalty	((200.00)) <u>35.00</u>
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00
<u>License print fee</u>	<u>5.00</u>

*Private investigative agency license renewals filed after the license expiration date will be charged the master license service late renewal fee in compliance with RCW 19.02.085.

[Statutory Authority: RCW 18.165.170(1). WSR 16-13-003, § 308-17-150, filed 6/1/16, effective 7/2/16. Statutory Authority: Chapter 18.165 RCW. WSR 06-13-036, § 308-17-150, filed 6/15/06, effective 7/16/06; WSR 04-12-024, § 308-17-150, filed 5/26/04, effective 7/1/04. Statutory Authority: RCW 43.24.086 and chapter 18.165 RCW. WSR 02-11-098, § 308-17-150, filed 5/20/02, effective 10/1/02. Statutory Authority: RCW 18.165.170(1), 43.24.086 and 34.05.482. WSR 97-17-051, § 308-17-150, filed 8/15/97, effective 9/15/97. Statutory Authority: RCW 18.165.170(1). WSR 93-16-060, § 308-17-150, filed 7/29/93, effective 9/1/93. Statutory Authority: RCW 18.165.170. WSR 91-22-111, § 308-17-150, filed 11/6/91, effective 12/7/91.]

OTS-3947.2

AMENDATORY SECTION (Amending WSR 15-22-109, filed 11/4/15, effective 12/5/15)

WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees. Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination plus background check fee	(((\$330.00)) <u>\$279.00</u>
Reexamination	25.00
License renewal	((300.00)) <u>252.00</u>
Late renewal ((with)) penalty	((400.00)) <u>117.00</u>
Change of principal/includes first examination plus background check fee	80.00
Principal armed endorsement	10.00
Private security guard:	

Title of Fee	Fee
Original license plus background check fee	((91.00)) <u>106.00</u>
Armed endorsement	10.00
Transfer fee	25.00
Licensees with inactive licenses are not required to pay late renewal penalty fees.	
License renewal	((85.00)) <u>99.00</u>
License late renewal ((with)) penalty. Late fee is not due if submitting a renewal with a transfer or rehire application.	((90.00)) <u>15.00</u>
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00
((Duplicate)) <u>License print fee</u>	((10.00)) <u>5.00</u>

[Statutory Authority: RCW 18.170.180(1). WSR 15-22-109, § 308-18-150, filed 11/4/15, effective 12/5/15. Statutory Authority: Chapter 18.170 RCW. WSR 08-19-056, § 308-18-150, filed 9/12/08, effective 11/1/08. Statutory Authority: Chapter 18.170 RCW and Federal Anti Terrorism and Prevention Act 2004. WSR 07-01-032, § 308-18-150, filed 12/12/06, effective 2/15/07; WSR 05-24-121, § 308-18-150, filed 12/7/05, effective 1/9/06. Statutory Authority: Chapter 18.170 RCW. WSR 04-12-023, § 308-18-150, filed 5/26/04, effective 7/1/04. Statutory Authority: RCW 43.24.086 and chapter 18.170 RCW. WSR 02-07-068, § 308-18-150, filed 3/18/02, effective 7/1/02. Statutory Authority: Chapter 18.170 RCW. WSR 98-24-045, § 308-18-150, filed 11/25/98, effective 1/1/99. Statutory Authority: RCW 18.170.180(1), 43.24.086 and 34.05.482. WSR 97-17-050, § 308-18-150, filed 8/15/97, effective 9/15/97. Statutory Authority: RCW 18.170 [18.170.180](1). WSR 93-11-025, § 308-18-150, filed 5/7/93, effective 7/1/93. Statutory Authority: RCW 18.170.180. WSR 91-22-112, § 308-18-150, filed 11/6/91, effective 12/7/91.]

OTS-3948.2

AMENDATORY SECTION (Amending WSR 16-13-002, filed 6/1/16, effective 7/2/16)

WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees. The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

Title of Fee	Fee
Bail bond agency/branch office:	
Application	((1,200.00)) <u>\$740.00</u>
License renewal	((1,150.00)) <u>615.00</u>

Title of Fee	Fee
Late renewal ((with)) penalty	((1,200.00)) <u>60.00</u>
Bail bond agent:	
Original license	((500.00)) <u>540.00</u>
License renewal	((575.00)) <u>615.00</u>
Late renewal ((with)) penalty	((600.00)) <u>35.00</u>
Change of qualified agent	250.00
Original endorsement to the bail bond agent license	100.00
Endorsement renewal	100.00
Endorsement renewal ((with)) penalty	((150.00)) <u>50.00</u>
Bail bond recovery agent license:	
Original license plus current applicable background check fees	((450.00)) <u>490.00</u>
License renewal	((475.00)) <u>515.00</u>
Late renewal ((with)) penalty	((500.00)) <u>35.00</u>
Examinations:	
Reexamination fee	25.00
<u>License print fee</u>	<u>5.00</u>

[Statutory Authority: RCW 18.235.030(1). WSR 16-13-002, § 308-19-130, filed 6/1/16, effective 7/2/16. Statutory Authority: Chapter 18.185 RCW. WSR 08-20-036, § 308-19-130, filed 9/23/08, effective 11/1/08; WSR 06-21-082, § 308-19-130, filed 10/17/06, effective 11/17/06; WSR 05-08-027, § 308-19-130, filed 3/30/05, effective 4/30/05. Statutory Authority: RCW 43.24.086 and chapter 18.185 RCW. WSR 02-07-067, § 308-19-130, filed 3/18/02, effective 7/1/02. Statutory Authority: 1993 c 260 § 13. WSR 93-21-053, § 308-19-130, filed 10/18/93, effective 11/18/93.]

OTS-3949.2

AMENDATORY SECTION (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
License application	(((\$25.00)) <u>\$35.00</u>

Title of Fee	Fee
Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>
 Hair design:	
License application	((25.00)) <u>35.00</u>
Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>
 Instructor:	
License application	((25.00)) <u>35.00</u>
Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>
 Manicurist:	
License application	((25.00)) <u>35.00</u>
Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>
 Esthetician:	
License application	((25.00)) <u>35.00</u>
Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>
 Master esthetician:	
License application	((25.00)) <u>35.00</u>

Title of Fee	Fee
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Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>

Barber:

License application	((25.00)) <u>35.00</u>
Reciprocity license	((50.00)) <u>60.00</u>
Renewal (two-year license)	((55.00)) <u>74.00</u>
Late renewal penalty	((55.00)) <u>65.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>

School:

License application	((300.00)) <u>340.00</u>
Renewal (one-year license)	((300.00)) <u>340.00</u>
Late renewal penalty	((175.00)) <u>205.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>

Salon/shop:

License application	((110.00)) <u>129.00</u>
*Reduced license application (permanent cosmetics)	15.00
Renewal (one-year license)	((110.00)) <u>129.00</u>
*Reduced renewal (permanent cosmetics)	15.00
Late renewal penalty	((50.00)) <u>60.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>

Mobile unit:

License application	((110.00)) <u>129.00</u>
*Reduced license application (permanent cosmetics)	15.00
Renewal (one-year license)	((110.00)) <u>129.00</u>
*Reduced renewal (permanent cosmetics)	15.00
Late renewal penalty	((50.00)) <u>60.00</u>
((Duplicate)) <u>License print fee</u>	((15.00)) <u>5.00</u>

Personal services:

Title of Fee	Fee
License application	((110.00)) <u>129.00</u>
*Reduced license application (permanent cosmetics)	15.00
Renewal (one-year license)	((110.00)) <u>129.00</u>
*Reduced renewal (permanent cosmetics)	15.00
Late renewal penalty	((50.00)) <u>60.00</u>
((Duplicate)) License print fee	((15.00)) <u>5.00</u>

* If you have an individual artist license and an artist shop location license to practice permanent cosmetics under chapter 18.300 RCW, and an operator license under chapter 18.16 RCW you may qualify for a reduction of the license fee for your salon shop license if it is at the same location as your artist shop location license.

[Statutory Authority: RCW 18.16.030, 43.24.023, 43.24.086. WSR 16-02-033, § 308-20-210, filed 12/29/15, effective 1/29/16. Statutory Authority: RCW 43.24.023 and 18.16.030. WSR 13-24-042, § 308-20-210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 43.24.086 and 18.16.030. WSR 09-24-062, § 308-20-210, filed 11/25/09, effective 1/1/10; WSR 06-02-048, § 308-20-210, filed 12/29/05, effective 2/1/06. Statutory Authority: RCW 18.16.030 and 43.24.023. WSR 03-14-046, § 308-20-210, filed 6/24/03, effective 7/25/03. Statutory Authority: RCW 18.16.030 and 43.24.086. WSR 03-06-054, § 308-20-210, filed 2/28/03, effective 4/1/03. Statutory Authority: RCW 18.16.030, 43.24.086, and 43.135.055. WSR 02-09-040, § 308-20-210, filed 4/12/02, effective 1/1/03. Statutory Authority: Chapter 18.16 RCW. WSR 92-15-087, § 308-20-210, filed 7/17/92, effective 8/17/92. Statutory Authority: Chapter 18.16 RCW and RCW 34.05.220. WSR 92-04-006, § 308-20-210, filed 1/23/92, effective 2/23/92. Statutory Authority: RCW 18.16.030 and 43.24.086. WSR 90-07-030, § 308-20-210, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086. WSR 87-10-028 (Order PM 650), § 308-20-210, filed 5/1/87.]

OTS-3950.2

AMENDATORY SECTION (Amending WSR 10-14-074, filed 7/1/10, effective 7/1/10)

WAC 308-22-050 Fees. The following fees shall be charged by the professional licensing division of the department of licensing. The department may require payment of fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve.

Title of Fee	Fee
Individual License:	
Tattoo	\$((250)) 290

Title of Fee	Fee
Body Art	\$((250)) <u>290</u>
Body Piercing	\$((250)) <u>290</u>
Permanent Cosmetics	\$((250)) <u>290</u>
Location License:	
Shop/Business	\$((300)) <u>340</u>
Mobile Unit	\$((300)) <u>340</u>
Event	\$((300)) <u>340</u>
Individual License Renewal:	
Tattoo	\$((250)) <u>290</u>
Body Art	\$((250)) <u>290</u>
Body Piercing	\$((250)) <u>290</u>
Permanent Cosmetics	\$((250)) <u>290</u>
Location License Renewal:	
Shop/Business	\$((300)) <u>340</u>
Mobile Unit	\$((300)) <u>340</u>
Event	\$((300)) <u>340</u>
Individual License Late Renewal Penalty Fee:	
Tattoo	\$((350)) <u>117</u>
Body Art	\$((350)) <u>117</u>
Body Piercing	\$((350)) <u>117</u>
Permanent Cosmetics	\$((350)) <u>117</u>
Location License Late Renewal Penalty Fee:	
Shop/Business	\$((400)) <u>117</u>
Mobile Unit	\$((400)) <u>117</u>
((Duplicate)) License Print Fee	\$((50)) <u>5</u>

[Statutory Authority: RCW 43.24.086, 43.24.023, chapter 18.300 RCW, and 2009 c 412. WSR 10-14-074, § 308-22-050, filed 7/1/10, effective 7/1/10.]

OTS-3951.2

AMENDATORY SECTION (Amending WSR 11-23-159, filed 11/22/11, effective 12/23/11)

WAC 308-29-045 Collection agency fees. The following fees will be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Collection agency—Main office:	
Original application	(\$850.00) <u>\$890.00</u>

Title of Fee	Fee
Renewal	((<u>\$475.00</u>)) <u>\$515.00</u>
Reregistration fee after 30 days	((<u>\$1,325.00</u>)) <u>\$1,365.00</u>
Branch office (with WA main office):	
Original application	((<u>\$550.00</u>)) <u>\$590.00</u>
Renewal	((<u>\$300.00</u>)) <u>\$340.00</u>
Reregistration fee after 30 days	((<u>\$850.00</u>)) <u>\$890.00</u>
Out-of-state collection agency—Main office:	
Original application	((<u>\$425.00</u>)) <u>\$445.00</u>
Renewal	((<u>\$237.50</u>)) <u>\$257.50</u>
Reregistration fee after 30 days	((<u>\$662.50</u>)) <u>\$682.50</u>
Branch office—With out-of-state main office:	
Original application	((<u>\$275.00</u>)) <u>\$295.00</u>
Renewal	((<u>\$150.00</u>)) <u>\$170.00</u>
Reregistration fee after 30 days	((<u>\$425.00</u>)) <u>\$445.00</u>

[Statutory Authority: RCW 19.16.140, 43.24.086, and 2011 1st sp.s. c 50. WSR 11-23-159, § 308-29-045, filed 11/22/11, effective 12/23/11. Statutory Authority: RCW 19.16.140, 43.24.086. WSR 04-18-043, § 308-29-045, filed 8/26/04, effective 10/1/04. Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-045, filed 5/22/01, effective 6/22/01. Statutory Authority: RCW 43.24.086. WSR 90-06-052, § 308-29-045, filed 3/2/90, effective 4/2/90; WSR 87-10-028 (Order PM 650), § 308-29-045, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-22-060 (Order PL 446), § 308-29-045, filed 11/2/83; WSR 83-17-031 (Order PL 442), § 308-29-045, filed 8/10/83. Formerly WAC 308-29-040.]

OTS-3952.2

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-060 Application fees. The following fees shall be charged by the department:

Title of Fee	Fee
Application for notary public commission	((<u>\$30.00</u>)) <u>\$40.00</u>
Application for electronic records notary public endorsement	\$15.00

Title of Fee	Fee
Renewal of notary public commission	((<u>\$30.00</u>)) <u>\$50.00</u>
Renewal of electronic records notary public endorsement	\$15.00
((<u>Duplicate certificate of commission (including name change)</u>))	\$15.00))
<u>License print fee</u>	<u>\$5.00</u>

[Statutory Authority: RCW 42.45.250. WSR 18-12-028, § 308-30-060, filed 5/29/18, effective 7/1/18. Statutory Authority: RCW 42.44.190. WSR 93-05-009, § 308-30-060, filed 2/5/93, effective 3/8/93. Statutory Authority: 1985 c 156 §§ 5 and 20. WSR 85-24-025 (Order PI 571), § 308-30-060, filed 11/26/85, effective 1/1/86.]

OTS-3955.2

AMENDATORY SECTION (Amending WSR 13-24-014, filed 11/21/13, effective 1/1/14)

WAC 308-70-130 Fees. The following fees shall be charged by the department of licensing:

Processor and Recycler Application, Initial	((<u>\$1,250.00</u>)) <u>\$1,290.00</u>
Processor and Recycler Application, Renewal	((<u>\$625.00</u>)) <u>\$665.00</u>
Supplier Application, Initial	((<u>\$350.00</u>)) <u>\$390.00</u>
Supplier Application, Renewal	((<u>\$175.00</u>)) <u>\$205.00</u>

[Statutory Authority: Chapter 19.290 RCW and RCW 43.24.086. WSR 13-24-014, § 308-70-130, filed 11/21/13, effective 1/1/14.]

OTS-3958.2

AMENDATORY SECTION (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

WAC 308-129-110 Seller of travel registration fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Original registration fee	((<u>\$202.00</u>)) <u>\$236.00</u>

Title of Fee	Fee
Registration renewal	((202.00)) <u>236.00</u>
Service of process fee	20.00
<u>Branch office registration fee</u>	<u>236.00</u>
<u>Branch office registration renewal</u>	<u>236.00</u>

Branch offices are subject to a duplicate registration fee. The duplicate registration fee for each branch office shall be an amount equal to the original registration fee.

[Statutory Authority: RCW 19.138.170 and 43.24.086. WSR 07-16-036, § 308-129-110, filed 7/23/07, effective 9/1/07. Statutory Authority: RCW 19.138.170, 43.24.023, 43.24.086. WSR 04-19-039, § 308-129-110, filed 9/13/04, effective 11/1/04. Statutory Authority: RCW 19.138.170, 43.24.023. WSR 04-12-027, § 308-129-110, filed 5/26/04, effective 7/1/04. Statutory Authority: RCW 19.138.170(1). WSR 00-01-128, § 308-129-110, filed 12/20/99, effective 1/20/00. Statutory Authority: Chapter 19.138 RCW. WSR 96-14-092, § 308-129-110, filed 7/2/96, effective 8/2/96.]

OTS-3960.2

AMENDATORY SECTION (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

WAC 308-320-050 Registration fees. The fee for any commercial telephone solicitor required to register in this state shall be ((seventy-two dollars)) \$84 for each business location annually. The annual fee shall be proratable and nonrefundable.

[Statutory Authority: 1989 c 20 and RCW 34.05.220. WSR 90-02-060, § 308-320-050, filed 1/2/90, effective 2/2/90.]

AMENDATORY SECTION (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

WAC 308-320-060 Annual renewal dates, forms, and fees. Registration renewals must be made annually on the form and date required by the department. The fee for annual renewal shall be ((seventy-two dollars)) \$84.

[Statutory Authority: 1989 c 20 and RCW 34.05.220. WSR 90-02-060, § 308-320-060, filed 1/2/90, effective 2/2/90.]

AMENDATORY SECTION (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

WAC 308-320-070 Changes and fees. Registrants shall inform the department of any changes in filed information when the change occurs.

(1) Changes in ownership or ownership structure or a change of more than ((fifty)) 50 percent of the partners in a partnership requires submission of a new master business application, new supplemental information statement, new personal history statement(s), and a fee of ((seventy-two dollars)) \$84 for each business location.

(2) Changes in business location requires a new master business application and a fee of ((seventy-two dollars)) \$84.

(3) Changes in managers, general partners of a limited partnership, partners in a general partnership or the president, vice president, secretary or treasurer of a corporation requires completion of a personal history form for the new individual(s).

(4) Changes in the business mailing address or the location where business records are kept shall be made in writing.

[Statutory Authority: 1989 c 20 and RCW 34.05.220. WSR 90-02-060, § 308-320-070, filed 1/2/90, effective 2/2/90.]

OTS-3961.2

AMENDATORY SECTION (Amending WSR 09-13-001, filed 6/3/09, effective 7/4/09)

WAC 308-408A-090 Home inspector fees. These fees are applicable to all original licenses, examination services, and fee generating services. The following fees shall be charged by professional licensing services of the department of licensing:

TITLE OF FEE	FEE
Home Inspector:	
Application/examination	\$300
Reexamination	
Full	\$300
National portion	\$250
State portion	\$125
Original license	(((\$680))) <u>\$720</u>
License renewal	(((\$375))) <u>\$415</u>
Late renewal ((with)) penalty	(((\$435))) <u>\$70</u>
Reinstatement penalty fine	\$150
Course review	(((\$75))) <u>\$88</u>

[Statutory Authority: RCW 18.280.050 and 18.280. [18.280.060] (6). WSR 09-13-001, § 308-408A-090, filed 6/3/09, effective 7/4/09.]

OTS-3962.2

AMENDATORY SECTION (Amending WSR 02-15-168, filed 7/23/02, effective 1/1/03)

WAC 308-420-240 Fees and charges. The following fees shall be paid under the provisions of chapter 19.105 RCW:

	TITLE OF FEE	FEE
(1) Original registration:		
One camping resort	((<u>\$3,200.00</u>))	<u>\$3,240.00</u>
Each additional camping resort in this state	((<u>1,000.00</u>))	<u>1,040.00</u>
(2) Contract fees:		
One to five hundred contracts	500.00	
Each additional five hundred contracts, or fraction thereof	100.00	
(3) Renewal fees:		
Annual renewal	((<u>2,000.00</u>))	<u>2,040.00</u>
Each additional camping resort in this state	((<u>800.00</u>))	<u>840.00</u>
Contract fees as described in subsection (2) of this section for each grouping of contracts:		
One to five hundred contracts	500.00	
Each additional five hundred contracts, or fraction thereof	100.00	
Late renewal penalty	((<u>800.00</u>))	<u>840.00</u>
(4) Fees for amending registration and public offering statements:		
For each amendment of registration or the public offering statement, not requiring an examination of documentation for adding campground or additional contracts to registration	50.00	
Amendment for the establishment of an additional campground into the registration for which an examination of documents is required exclusive of any other fees	1,500.00	
Penalty fee for failure to file an amendment within thirty days of the occurrence of a material change as defined in WAC 308-420-030 or 308-420-040	100.00	
(5) Fees for impounds, escrows, trust and depositories:		
For each initial establishment of impound, escrow, trust or other arrangement requiring agency monitoring	250.00	

	TITLE OF FEE	FEE
	Each required periodic report	20.00
(6) Advertising filings:		
	Each individual advertisement filed with the department	100.00
	Advertisement involving no examination of campground instruments and which are for the purpose of marketing surveys or feasibility studies	75.00
(7) Salesperson fees:		
	Registration	<u>((+50.00))</u> <u>176.00</u>
	Renewal	<u>((+50.00))</u> <u>176.00</u>
	Transfer	150.00
	((Duplicate)) <u>Print license fee</u>	<u>((35.00))</u> <u>5.00</u>
(8)	Fees for exemptions and exemption applications:	
	Review of application for exemption under RCW 19.105.320(2)	150.00
(9)	All fees are nonrefundable after the application has been received.	
(10)	All fees shall be paid to the order of the Washington state treasurer.	

[Statutory Authority: RCW 19.105.411, 43.24.086, and 2001 c 7. WSR 02-15-168, § 308-420-240, filed 7/23/02, effective 1/1/03. Statutory Authority: RCW 19.105.411 and 43.240.086. WSR 98-18-082, § 308-420-240, filed 9/1/98, effective 10/2/98. Statutory Authority: RCW 19.105.130. WSR 91-01-082, § 308-420-240, filed 12/17/90, effective 1/17/91. Formerly WAC 460-90A-145.]

WSR 22-18-105

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed September 7, 2022, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-104.

Title of Rule and Other Identifying Information: WAC 308-48-800

Fees.

Hearing Location(s): On October 11, 2022, at 11:00 a.m. Join Zoom meeting link <https://dol-wa.zoom.us/j/89156878143?pwd=UnRtaERWTFV0K3pKL0tVOUxENXRLdz09>, Meeting ID 891 5687 8143, Passcode 457675, one tap mobile +12532158782,,89156878143#,,,*457675# US (Tacoma), +16694449171,,89156878143#,,,*457675# US; dial by your location +1 253 215 8782 US (Tacoma). Find your local number <https://dol-wa.zoom.us/u/kb3TiH2SgE>. If you are having trouble accessing the public hearing at the time of the hearing, please call 360-902-3846.

Date of Intended Adoption: October 12, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by October 10, 2022.

Assistance for Persons with Disabilities: Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by October 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees to cover the cost of administering the funerals and cemeteries program.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. These programs last saw an increase in fees in 2017. Current fees are insufficient to sustain these programs. The department is considering fee increases that would go into effect Fall of 2022.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards,

including fees set or adjusted under the authority of RCW
19.80.045.

Scope of exemption for rule proposal:
Is fully exempt.

September 7, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3954.2

AMENDATORY SECTION (Amending WSR 20-09-031, filed 4/6/20, effective 5/7/20)

WAC 308-48-800 Fees. (1) Funeral fees.

Title of Fee	Fee
Embalmer:	
State examination application	((<u>\$100.00</u>)) <u>\$135.00</u>
Renewal	((<u>\$150.00</u>)) <u>203.00</u>
Late renewal fee	((<u>\$35.00</u>)) <u>47.00</u>
((Duplicate)) <u>License print fee</u>	((<u>\$25.00</u>)) <u>5.00</u>
Embalmer intern:	
Intern application	((<u>\$135.00</u>)) <u>182.00</u>
Application for examination	100.00
Intern renewal	((<u>\$100.00</u>)) <u>135.00</u>
Late renewal fee	((<u>\$35.00</u>)) <u>47.00</u>
((Duplicate)) <u>License print fee</u>	((<u>\$25.00</u>)) <u>5.00</u>
Funeral director:	
State examination application	((<u>\$100.00</u>)) <u>135.00</u>
Renewal	((<u>\$150.00</u>)) <u>203.00</u>
Late renewal fee	((<u>\$35.00</u>)) <u>47.00</u>
((Duplicate)) <u>License print fee</u>	((<u>\$25.00</u>)) <u>5.00</u>
Funeral director intern:	
Intern application	((<u>\$135.00</u>)) <u>182.00</u>
Application for examination	100.00
Intern renewal	((<u>\$100.00</u>)) <u>135.00</u>

Title of Fee	Fee
Late renewal fee	((35.00)) <u>47.00</u>
((Duplicate)) <u>License print fee</u>	((25.00)) <u>5.00</u>
Funeral establishment:	
Original application	((400.00)) <u>540.00</u>
Renewal	((325.00)) <u>439.00</u>
Branch license	((350.00)) <u>473.00</u>
Branch renewal	((325.00)) <u>439.00</u>
<u>Preneed application</u>	250.00
<u>Preneed renewal</u>	225.00))
<u>License print fee</u>	5.00
Prearrangement funeral services:	
<u>Application</u>	338.00
<u>Renewal</u>	304.00
<u>License print fee</u>	5.00
Academic intern	No fee
Certificate of removal license:	
Application	((30.00)) <u>41.00</u>
Renewal	((15.00)) <u>25.00</u>
Retired status certificate	No fee

(2) Cemetery fees.

Title of Fee	Fee
Certificate of authority:	
Application	(((\$300.00)) <u>\$405.00</u>
<u>License print fee</u>	5.00
Renewal:	((6.20)) <u>8.37</u>
Charge per each interment, entombment and inurnment during preceding calendar year collected at renewal or change of ownership	
Prearrangement sales ((license) <u>endorsement</u>	
Application	((250.00)) <u>338.00</u>
Renewal	((225.00)) <u>304.00</u>
Exemption from prearrangement sales ((license) <u>endorsement</u>	
Application	((70.00)) <u>95.00</u>
Renewal	((35.00)) <u>47.00</u>

Title of Fee	Fee
Disposition permit for human remains following cremation, alkaline hydrolysis, or natural organic reduction	
Application	((70.00)) <u>95.00</u>
Renewal	((35.00)) <u>47.00</u>

(3) Reduction facility fees.

Title of Fee	Fee
Crematory license application	(((\$210.00)) <u>\$284.00</u>
Alkaline hydrolysis license application	((210.00)) <u>284.00</u>
Natural organic reduction license application	((210.00)) <u>284.00</u>
<u>License print fee</u>	5.00
Renewal:	((8.00)) <u>10.80</u>

Regulatory fee for crematories, alkaline hydrolysis facilities, and natural organic reduction facilities collected at time of renewal per cremation, hydrolysis, or natural organic reduction performed during previous calendar year

Crematory operator license:	
Application	((+35.00)) <u>182.00</u>
Renewal	((100.00)) <u>135.00</u>

Alkaline hydrolysis operator license:

Application	((+35.00)) <u>182.00</u>
Renewal	((100.00)) <u>135.00</u>

Natural organic reduction facility operator license:

Application	((+35.00)) <u>182.00</u>
Renewal	((100.00)) <u>135.00</u>

[Statutory Authority: RCW 68.05.105 and 18.39.175. WSR 20-09-031, § 308-48-800, filed 4/6/20, effective 5/7/20. Statutory Authority: RCW 68.05.205, 18.39.050, and 43.24.086. WSR 14-24-067, § 308-48-800, filed 11/26/14, effective 1/1/15. Statutory Authority: RCW 18.39.050 and 18.39.175, chapter 34.05 RCW and RCW 43.24.086. WSR 10-24-046, § 308-48-800, filed 11/24/10, effective 1/1/11; WSR 09-17-116, § 308-48-800, filed 8/18/09, effective 9/18/09. Statutory Authority: RCW 18.39.175 and chapter 34.05 RCW. WSR 07-18-030, § 308-48-800, filed 8/28/07, effective 9/28/07; WSR 07-03-027, § 308-48-800, filed 1/5/07, effective 2/5/07. Statutory Authority: RCW 18.39.181 and chapter 34.05 RCW. WSR 05-20-076, § 308-48-800, filed 10/4/05, effective 11/4/05. Statutory Authority: RCW 18.39.050. WSR 03-11-021, § 308-48-800, filed

5/12/03, effective 6/30/03. Statutory Authority: RCW 18.39.181. WSR 99-16-040, § 308-48-800, filed 7/29/99, effective 8/29/99. Statutory Authority: RCW 18.39.175(4). WSR 98-21-056, § 308-48-800, filed 10/19/98, effective 11/19/98; WSR 91-11-023, § 308-48-800, filed 5/7/91, effective 6/7/91; WSR 91-01-006, § 308-48-800, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 43.24.086. WSR 90-07-024, § 308-48-800, filed 3/14/90, effective 4/14/90; WSR 87-10-028 (Order PM 650), § 308-48-800, filed 5/1/87.]

WSR 22-18-106**PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed September 7, 2022, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-105.

Title of Rule and Other Identifying Information: WAC 308-15-150

Fees.

Hearing Location(s): On October 11, 2022, at 1:00 p.m. Join Zoom meeting link [https://dol-wa.zoom.us/j/81518826479?](https://dol-wa.zoom.us/j/81518826479?pwd=R1c4Uk5XMyJZTkFPejhUOUgxdE03UT09), Meeting ID 815 1882 6479, Passcode 303287, one tap mobile +12532158782,,81518826479#,,,*303287# US (Tacoma), +14086380968,,81518826479#,,,*303287# US (San Jose); dial by your location +1 253 215 8782 US (Tacoma). Find your local number <https://dol-wa.zoom.us/u/kbuQjWjn8M>. If you are having trouble accessing the public hearing at the time of the hearing, please call 360-902-3846.

Date of Intended Adoption: October 12, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by October 10, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by October 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees to cover the cost of administering the geologists program.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. This program last saw an increase in fees in 2017. Current fees are insufficient to sustain these programs. The department is considering fee increases that would go into effect the fall of 2022.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1142.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set

or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:
Is fully exempt.

September 7, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3945.2

AMENDATORY SECTION (Amending WSR 19-22-034, filed 10/31/19, effective 12/1/19)

WAC 308-15-150 Fees. Fees.

Type of Fee	Amount
Application fees - includes initial license	
Application fee for geologist-in-training	\$135.00
Application fee for geologist (applying by examination)	(((\$100.00))) <u>\$135.00</u>
Application fee for each specialty (applying by examination)	(((\$100.00))) <u>\$135.00</u>
Application fee for geologist (applying by reciprocity)	(((\$200.00))) <u>\$270.00</u>
Application fee for each specialty (applying by reciprocity)	(((\$150.00))) <u>\$203.00</u>
Examination fees	
Administration fee for reexamination	(((\$65.00))) <u>\$88.00</u>
Specialty examination (hydrogeologist or engineering geologist examination)	(((\$300.00))) <u>\$405.00</u>
Renewal fees	
Annual renewal fee for geologist	(((\$100.00))) <u>\$135.00</u>
Annual renewal fee for each specialty	(((\$85.00))) <u>\$115.00</u>
((Annual renewal for geologist, with)) Late penalty fee (if paid ninety days or more after due date)	(((\$200.00))) <u>\$135.00</u>
((Annual renewal for each specialty, with late fee)) Late penalty for each specialty (if paid ninety days or more after due date)	(((\$170.00))) <u>\$115.00</u>
Miscellaneous fees	
Duplicate wall certificate.....	\$25.00
Print license fee.....	<u>\$5.00</u>
Certification of license records to other jurisdictions.....	\$45.00
Proctor examination for another jurisdiction.....	\$100.00

In addition to applicable state examination fees, ASBOG may collect, from the applicants, the charges of examination development, examination administration and grading. Terms and conditions for payment of the charges to ASBOG are determined by ASBOG.

[Statutory Authority: RCW 18.220.040, 18.220.050, and 43.24.086. WSR 19-22-034, § 308-15-150, filed 10/31/19, effective 12/1/19. Statutory Authority: RCW 18.220.040 and 43.24.086. WSR 16-12-091, § 308-15-150, filed 5/31/16, effective 7/1/16; WSR 14-11-013, § 308-15-150, filed 5/8/14, effective 7/1/14; WSR 11-08-054, § 308-15-150, filed 4/5/11, effective 7/1/11. Statutory Authority: RCW 18.220.040. WSR 08-12-039, § 308-15-150, filed 5/30/08, effective 7/1/08. Statutory Authority: RCW 18.220.040, 18.220.050. WSR 06-04-022, § 308-15-150, filed 1/23/06, effective 2/23/06; WSR 05-01-174, § 308-15-150, filed 12/21/04, effective 1/21/05. Statutory Authority: Chapter 18.220 RCW. WSR 01-12-022, § 308-15-150, filed 5/25/01, effective 6/25/01.]